

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
5)
6 PLAINTIFF,)
7)
8)
9) CASE NO. BC226593
10 VS.)
11)
12 PHILIP MORRIS,)
INCORPORATED, A)
9 CORPORATION; INTERNATIONAL)
HOUSE OF PANCAKES)
10 INCORPORATED, A)
CORPORATION.
11)
DEFENDANTS.)
12 _____)
13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 MONDAY, APRIL 16TH, 2001
15 APPEARANCES:
16 (FOR PLAINTIFF) LAW OFFICES OF
MICHAEL J. PIUZE
17 11755 WILSHIRE BLVD.
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18 LOS ANGELES, CA 90025
19 (FOR DEFENDANTS) ARNOLD & PORTER
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25
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W I T N E S S E S
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11 WITNESS DIRECT CROSS REDIRECT RECROSS
12 PETRALLI, 2497
DAVID
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14 GOLDBERG, 2502
MARVIN
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FOR IN

5 DESCRIPTION IDENTIFICATION EVIDENCE VOL.

6 8002.43 - BLOWUP OF 2475

MARLBORO AD

7

8002.75 BLOWUP OF 2548

8 MARLBORO AD

9 8002.38 - BLOWUP OF 2556

MARLBORO AD

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8002.76 BLOWUP OF 2557

11 MARLBORO AD

12 8002.77 - BLOWUP OF 2558

MARLBORO AD

13

8002.78 BLOWUP OF 2559

14 MARLBORO AD

15 8002.79 - BLOWUP OF 2560

MARLBORO AD

16

8002.45 BLOWUP OF 2561

17 MARLBORO AD

18 8002.44 - BLOWUP OF 2563

MARLBORO AD

19

8002.40 BLOWUP OF 2563

20 MARLBORO AD

21 8002.47 - BLOWUP OF 2565

MARLBORO AD

22

8002.81 BLOWUP OF 2566

23 MARLBORO AD

24 8002.82 - BLOWUP OF 2567

MARLBORO AD

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8002.83 BLOWUP OF 2573

26 MARLBORO AD

27 8002.84 - BLOWUP OF 2574

MARLBORO AD

28

2497

1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 16TH, 2001

2 1:30 P.M.

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5
6 (THE FOLLOWING PROCEEDINGS
7 WERE HELD IN OPEN COURT IN
8 THE PRESENCE OF THE JURY.)
9
10 THE COURT: ALL RIGHT. OUR JURY PANEL IS
11 WITH US. COUNSEL ARE PRESENT AS WELL.
12 SIR, IF YOU WOULD PLEASE STEP
13 FORWARD, JUST OVER HERE.
14
15
16 DAVID PETRALLI,
17 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN
18 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
19 AND TESTIFIED FURTHER AS FOLLOWS:
20 YOU UNDERSTAND YOU ARE STILL UNDER
21 OATH.
22 THE WITNESS: YES.
23 THE COURT: MR. PIUZE.
24 THE CLERK: COUNSEL PIUZE, WITH YOUR
25 PERMISSION AND THE COURT'S PERMISSION, BECAUSE I
26 BELIEVE THERE'S BEEN A MISSPELLING, COULD I HAVE
27 YOU STATE YOUR NAME LEASE.
28 THE WITNESS: DAVID PETRALLI.

2498

1 THE CLERK: DAVID?
2 THE WITNESS: YES.
3 THE CLERK: THANK YOU.
4
5 DIRECT EXAMINATION (RESUMED)
6
7 BY MR. PIUZE:
8 Q. STILL NERVOUS?
9 A. NO, I AM FINE. THANKS.
10 Q. FROM WHEN YOU FIRST MET RICHARD
11 BOEKEN, HAS HE SMOKED?
12 A. YES.
13 Q. WHAT?
14 A. YES.
15 Q. WHAT?
16 A. CIGARETTES.
17 Q. WHAT?
18 A. MARLBORO CIGARETTES.
19 Q. EXCELLENT.
20 A. YES.
21 Q. IT'S LIKE TENNIS.
22 ALWAYS MARLBORO?
23 A. ALWAYS MARLBORO.
24 Q. HAS HE ALWAYS SMOKED A LOT?
25 A. YES, EVER SINCE I FIRST MET HIM.
26 Q. THAT'S WHAT I MEANT.
27 WHAT ABOUT YOUR MOM?
28 A. MY MOM?

2499

1 Q. HAS YOUR MOM ALWAYS SMOKED
2 CIGARETTES?
3 A. YES, SHE HAS.
4 Q. WHAT BRAND?
5 A. MARLBORO.
6 Q. AT THE END OF FRIDAY, YOU TALKED
7 ABOUT SOME PHYSICAL CHANGES TO MR. BOEKEN WHICH WE
8 ARE AWARE OF. I'D LIKE YOU TO TALK A LITTLE BIT,
9 PLEASE, ABOUT HIS STATE OF MIND, IF YOU WOULD, NOW,

10 COMPARED TO WHEN YOU KNEW HIM IN THE PAST. CAN YOU
11 DO THAT?
12 A. YES.
13 Q. PLEASE.
14 A. HE WAS -- THE BIGGEST THING I
15 NOTICED IN HIS PERSONALITY IS HE USED TO BE MORE
16 CALM AND, JUST OVERALL, NOTHING REALLY GOT HIM
17 UPSET OR HE NEVER REALLY ACTED OUT. AND NOW, I
18 MEAN, HE NODS OFF A LOT. WHEN YOU ASK HIM
19 QUESTIONS LIKE, DO YOU WANT A SANDWICH, HE WILL
20 SNAP AND SAY, NO, YOU KNOW, AND THAT'S NOT NORMALLY
21 LIKE HIM. HE WAS ALWAYS CALM AND RELAXED, NO
22 PROBLEMS.
23 AND NOW, IT'S JUST, YOU ARE JUST
24 WATCHING HIS MIND, BASICALLY, UNRAVEL, SLOWLY
25 THROUGH HIS HEALTH CONDITIONS BECAUSE OF TREATMENTS
26 AND, YOU KNOW, MEDICATIONS AND CIGARETTES, YOU
27 KNOW. IT'S JUST, IT'S JUST, THAT'S BASICALLY IT,
28 IT'S JUST --
2500

1 Q. OKAY.
2 READY FOR A NEW QUESTION?
3 A. SURE.
4 Q. BEFORE THIS TRIP, WHEN IS THE LAST
5 TIME THAT YOU SAW RICHARD BOEKEN?
6 A. ABOUT FIVE MONTHS AGO.
7 Q. HOW OFTEN, TYPICALLY, DO YOU COME
8 TO THE MAINLAND FROM HAWAII?
9 A. ABOUT TWICE A YEAR.
10 Q. WHEN YOU SAY ABOUT FIVE MONTHS AGO,
11 TELL US THE MONTH WHEN YOU WERE LAST HERE ON THE
12 MAINLAND, PLEASE.
13 A. SEPTEMBER, SOMETIME DURING
14 SEPTEMBER.
15 Q. SO SINCE SEPTEMBER TILL NOW, AS FAR
16 AS PHYSICAL IS CONCERNED, HAS MR. BOEKEN
17 DETERIORATED PHYSICALLY?
18 A. YES.
19 Q. AS FAR AS MENTALLY, I AM NOT
20 TALKING ABOUT EMOTIONALLY NOW, BUT MENTALLY, HIS
21 ABILITY TO BE MENTALLY SHARP, FOCUS ON THINGS,
22 CARRY ON A CONVERSATION, HAS HE DETERIORATED SINCE
23 SEPTEMBER?
24 A. YES.
25 Q. AND AS FAR AS THE EMOTIONAL IS
26 CONCERNED, HAS HE ALSO DETERIORATED SINCE
27 SEPTEMBER?
28 A. YES.
2501

1 Q. HOW OFTEN DO YOU CALL, WHEN YOU ARE
2 IN HAWAII AND YOU ARE NOT HERE, HOW OFTEN DO YOU
3 CALL YOUR MOM?
4 A. ABOUT ONCE A WEEK.
5 Q. HOW OFTEN DO YOU TALK TO RICHARD
6 BOEKEN, TYPICALLY, WHEN YOU CALL HIM?
7 A. ONCE A WEEK.
8 Q. YOU TALK TO HIM TOO, EACH TIME?
9 A. YEAH, UH-HUH.
10 Q. OVER THE PHONE, HAS HIS CHANGE BEEN
11 DRAMATIC OR SLOW, PROGRESSIVE CHANGE OR ANY OTHER
12 WAY YOU WANT TO DESCRIBE IT OVER THE COURSE OF THE
13 LAST FIVE MONTHS?
14 A. HE ONLY TALKS FOR ABOUT A MINUTE OR

15 TWO NOW AT THE MOST COMPARED TO 45 MINUTES BEFORE.
16 Q. ALL RIGHT. THAT'S ALL I GOT.
17 THANK YOU VERY MUCH.
18 YOU CAN'T GO, THOUGH.
19 THANK YOU.
20 THE COURT: ALL RIGHT.
21 CROSS-EXAMINATION?
22 MR. CARLTON: YOUR HONOR, HE CAN GO. WE
23 HAVE NO QUESTION.
24 THE COURT: SIR, YOU MAY STEP DOWN. THE
25 WITNESS IS EXCUSED.
26 MR. PIUZE: I WAS WRONG.
27 PLAINTIFF CALLS DR. MARVIN GOLDBERG
28 AS ITS NEXT WITNESS.
2502

1 THE COURT: SIR, IF YOU WOULD STEP UP
2 OVER HERE, FACE MY CLERK, RAISE YOUR RIGHT HAND TO
3 BE SWORN AS A WITNESS IN THIS MATTER.
4
5
6 MARVIN GOLDBERG, PH.D.,
7 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN
8 AND TESTIFIED AS FOLLOWS:
9 THE CLERK: YOU DO SOLEMNLY STATE THE
10 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
11 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
12 TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.
13 THE WITNESS: YES, I DO.
14 THE CLERK: HAVE A SEAT, PLEASE.
15 SIR, FOR OUR RECORD, IF YOU COULD
16 STATE YOUR FIRST AND LAST NAME AND SPELL YOUR LAST
17 NAME.
18 THE WITNESS: MARVIN GOLDBERG,
19 G-O-L-D-B-E-R-G.
20
21 DIRECT EXAMINATION
22
23 BY MR. PIUZE:
24 Q. HI.
25 A. HI.
26 Q. HOW MANY TIMES HAVE YOU TESTIFIED
27 IN COURT?
28 A. ONCE, A VERY LONG TIME AGO.

2503
1 Q. ARE YOU NERVOUS?
2 A. A LITTLE.
3 Q. YOU ARE A DOCTOR OF WHAT, PLEASE?
4 A. MARKETING.
5 Q. SO THAT MEANS YOU ARE NOT AN M.D.,
6 MEDICAL DOCTOR?
7 A. NO, I AM NOT.
8 Q. ARE YOU A PH.D. DOCTOR?
9 A. YES, I AM.
10 Q. WHAT'S YOUR PH.D. IN, PLEASE?
11 A. I HAVE A DOCTORATE IN MARKETING
12 FROM THE UNIVERSITY OF ILLINOIS WITH A MINOR IN
13 SOCIAL PSYCHOLOGY AND ECONOMICS, MINOR.
14 Q. WHAT DO YOU DO NOW WHEN YOU ARE NOT
15 SITTING THERE IN THAT WITNESS STAND?
16 A. I AM A CHAIRMAN OF THE MARKETING
17 DEPARTMENT AT PEN STATE UNIVERSITY, THE UNIVERSITY
18 PART, PENNSYLVANIA. I TEACH ADVERTISING, CONSUMER
19 BEHAVIOR. I DO RESEARCH.

20 Q. WHAT'S ADVERTISING?

21 A. ADVERTISING IS AN EFFORT TO
22 PERSUADE FIRST AND FOREMOST, TYPICALLY, BY FOCUSING
23 ON A TARGET AUDIENCE, SEGMENTING, PICKING A GROUP,
24 FOR EFFICIENCY, AND TRYING TO PERSUADE THAT THE
25 PRODUCT, TYPICALLY, OR SERVICE, IS OF MERIT AND
26 OUGHT TO BE PURCHASED, ULTIMATELY, FOR THE PROFIT
27 OF THE FIRM DOING THE ADVERTISING.

28 Q. WHAT'S CONSUMER BEHAVIOR?

2504

1 A. CONSUMER BEHAVIOR, IN EFFECT, IS
2 WHAT IT SAYS IT IS. IT'S A BODY OF RESEARCH THAT
3 BLENDS PSYCHOLOGY -- SO IT IS PSYCHOLOGY,
4 SOCIOLOGY, ANTHROPOLOGY AND MARKETING AND
5 ECONOMICS. BUT THE GOAL OF TRYING TO UNDERSTAND
6 HOW THE CONSUMER BEHAVES, HOW HE OR SHE MAKES A
7 DECISION WITH REGARD TO PURCHASE SO THAT CERTAINLY
8 IN THE CONTEXT OF A BUSINESS GOAL WE CAN
9 EFFICIENTLY REACH THEM THROUGH ADVERTISING. OR THE
10 ADVERTISER CAN.

11 Q. MY QUESTIONS ARE FOLLOWING YOUR
12 LEAD. YOU SAID YOU TAUGHT ADVERTISING, YOU TAUGHT
13 CONSUMER BEHAVIOR. SO YOU HAVE DEFINED THOSE TWO
14 THINGS FOR US; CORRECT?

15 A. YES, PRIMARILY CONSUMER BEHAVIOR,
16 BECAUSE WHEN YOU TEACH CONSUMER BEHAVIOR, IT'S WITH
17 REGARD TO ADVERTISING.

18 Q. SO WHEN YOU SAY "PRIMARILY CONSUMER
19 BEHAVIOR," ARE YOU SAYING THAT'S PRIMARILY WHAT YOU
20 TEACH?

21 A. YES.

22 Q. AND YOU ALSO SAID YOU DID SOME
23 RESEARCH. WHAT KIND OF RESEARCH DO YOU DO?

24 A. I WOULD DEFINE MY AREA OF RESEARCH
25 AS LOOKING AT ADVERTISING EFFECTS, HOW ADVERTISING
26 EFFECTS PEOPLE. A LARGE PORTION OF THAT, I'D SAY,
27 PERHAPS, TWO-THIRDS, HAS FOCUSED ON HOW ADVERTISING
28 EFFECTS YOUTH, ABOUT A THIRD ON ADULTS.

2505

1 Q. OKAY. THANKS.

2 NOW, DID I ASK YOU TO CONSULT WITH
3 ME IN THIS CASE, MR. BOEKEN'S CASE, AGAINST PHILIP
4 MORRIS?

5 A. I RECEIVED A CALL FROM PEOPLE IN
6 YOUR OFFICE ASKING ME IF I WOULD CONSULT, YES.

7 Q. AND HAVE YOU BEEN PROVIDED WITH
8 CERTAIN MATERIALS SINCE THEN?

9 A. YES, I HAVE.

10 Q. SUCH AS?

11 A. THE PARTS OF THE DEPOSITION OF
12 MR. BOEKEN, SOME -- I THINK ATTACHED TO THAT WERE
13 SOME ADS FOR MARLBORO, A FEW LETTERS, ONE DEALING
14 WITH PUBLIC RELATIONS' SIDE, RECENT PUBLIC
15 RELATIONS EFFORTS, ANOTHER PART OF MARLBORO AND ONE
16 DEALING WITH THE DETAILS DEALING WITH THE
17 DEPOSITION.

18 Q. AND THAT'S A DEPOSITION YOU GAVE
19 HERE IN LOS ANGELES?

20 A. YES.

21 Q. IN ADDITION TO THE STUFF THAT YOU
22 WERE SENT BY MY OFFICE, ONCE YOU AGREED TO CONSULT
23 ON THIS CASE, HAVE YOU GONE TO EITHER THE LIBRARY
24 OR THE COMPUTER OR WHEREVER PEOPLE GO NOWADAYS TO

25 DO ACADEMIC RESEARCH ON THIS ISSUE?

26 A. YES. I HAVE REVIEWED A GREAT
27 NUMBER OF MATERIALS THAT I HAD, IN SOME CASES,
28 PREVIOUSLY LOOKED AT AND WANTED TO REVIEW THEM.
2506

1 THESE GO BACK TO DEPOSITION THAT I
2 DID FOR ANOTHER LAW FIRM AND ALSO SOME BROADER
3 READINGS IN THE LITERATURE AND MARKETING AND
4 PSYCHOLOGY.

5 Q. OKAY. LET'S STICK WITH -- I AM
6 GOING TO GET TO YOUR QUALIFICATIONS AND ALL OF YOUR
7 PUBLICATIONS AND WHAT YOU HAVE DONE IN AWHILE. BUT
8 I AM TRYING TO GET SOME BROAD STROKES HERE.
9 YOU MENTIONED A DEPOSITION ON
10 ANOTHER CASE. WAS THAT A CASE INVOLVING TOBACCO?

11 A. YES, IT WAS.

12 Q. OKAY. AND ALTHOUGH YOU DIDN'T
13 TESTIFY IN COURT, YOU WERE A CONSULTANT IN SOME
14 OTHER CASE, SOME OTHER PLACE, SOME OTHER TIME,
15 INVOLVING TOBACCO?

16 A. THAT IS RIGHT. IT WAS WITH REGARD
17 TO THE MISSISSIPPI CASE AGAINST THE, ALL OF THE
18 CIGARETTE COMPANIES.

19 Q. STATE ATTORNEY GENERAL?

20 A. YES.

21 Q. ROUGHLY, HOW LONG AGO WAS THAT,
22 PLEASE.

23 A. I THINK IT WAS 1996, I BELIEVE.

24 Q. HAVE YOU, IN ORDER TO PREPARE TO
25 COME IN HERE AND TESTIFY, DONE ANY KIND OF
26 CONSULTING OR SPEAKING WITH A DR. POLLAY?

27 A. YES, I DID SPEAK WITH HIM TWICE.

28 Q. I DON'T WANT YOU TO BE QUOTING
2507

1 ANYTHING OR GIVING US ANY CONTENT OF WHAT HE SAID
2 TO YOU OR WHAT YOU SAID TO HIM, BUT JUST TELL US
3 WHO DR. POLLAY IS IN REGARD TO TOBACCO?

4 A. RICHARD POLLAY OR POLLAY IS SOMEONE
5 WHO HAS DONE AN AWFUL LOT OF RESEARCH ON THE ISSUE
6 OF ADVERTISING AND CIGARETTES, AND I BELIEVE HAS
7 DONE A FAIR AMOUNT OF TESTIFYING WITH REGARD TO
8 THAT ISSUE IN COURT.

9 Q. AND HE'S A DOCTOR OF WHAT, PLEASE?

10 A. MARKETING.

11 Q. IS HE ALSO A PROFESSOR?

12 A. YES.

13 Q. WHERE AT?

14 A. UNIVERSITY OF BRITISH COLUMBIA.

15 Q. NOW, ARE YOU PREPARED, DURING YOUR
16 TIME HERE, TO TALK ABOUT SOME SPECIFIC TOPICS
17 HAVING TO DO WITH TOBACCO, ESPECIALLY MARLBORO
18 TOBACCO, ADVERTISING AND THOSE ISSUES?

19 A. YES, I AM.

20 Q. GIVE US SOME CATEGORIES, IF YOU
21 WOULD.

22 A. WELL, I THINK WHAT I WOULD LIKE TO
23 TALK ABOUT IS THE ROLE ADVERTISING PLAYS IN
24 INDUCING YOUTH TO BE INTERESTED IN WHATEVER
25 PRODUCT, AND IN THE CASE AT HAND, CIGARETTE
26 ADVERTISING, THE ROLE IT PLAYS IN INDUCING YOUTH TO
27 SMOKE. CERTAINLY THAT'S THE BROADEST RUBRIC.
28 HOW THAT HAPPENS, THE PROCESS,
2508

1 CERTAINLY THE LINE OF LOGIC THAT I HAVE SEEN
2 LINKING SOME DOCUMENTS BY PHILIP MORRIS THAT MADE
3 IT SEEM THAT THEY WERE VERY INTERESTED IN YOUNG
4 PEOPLE.
5 MR. LEITER: OBJECTION TO HIS TESTIMONY
6 ABOUT WHAT PHILIP MORRIS WAS INTERESTED IN.
7 THE COURT: ALL RIGHT. HE CAN TESTIFY AS
8 TO HIS IMPRESSION BUT, LADIES AND GENTLEMEN, YOU
9 ALL UNDERSTAND THAT HE CAN'T READ THE MIND OF
10 ANOTHER PERSON. ALL HE CAN DO IS TELL YOU WHAT HE
11 HAS READ IN ANY DOCUMENT.
12 PROCEED.
13 Q BY MR. PIUZE: IF I COULD, LET ME
14 STOP YOU FOR A SECOND HERE.
15 I DON'T WANT YOU TO BE READING
16 PHILIP MORRIS'S MIND.
17 LET ME SEE IF I CAN GIVE YOU A
18 COUPLE DIRECT QUESTIONS ON THIS ISSUE HERE.
19 ARE YOU IN POSSESSION OF SOME
20 PHILIP MORRIS INTERNAL DOCUMENTS THAT DEAL WITH ITS
21 EFFORTS TO MARKET MARLBOROS TO MINORS?
22 A. YES, I AM.
23 Q. AND ARE YOU PREPARED TO DISCUSS THE
24 CONTENTS OF THOSE DOCUMENTS?
25 A. YES, I AM.
26 Q. OKAY, FINE.
27 SO IF YOU CAN -- WE ARE DONE WITH
28 THAT PART, THAT LITTLE PART THERE?
2509
1 A. OKAY.
2 Q. WE WILL COME BACK TO IT IN MORE
3 DETAIL.
4 ARE THERE ANY OTHER SUBISSUES YOU
5 JUST WANT TO ALERT THE JURY TO NOW AS I AM SORT OF
6 GIVING AN OVERVIEW OF YOUR TESTIMONY?
7 A. AGAIN, HOW THE PROCESS OF
8 ADVERTISING AND HOW IT WORKS, THERE'S ALSO, I
9 THINK, A FAIRLY SIGNIFICANT ISSUE AS TO THE ROLE OF
10 PEERS AND PARENTS.
11 THERE'S A SIGNIFICANT ISSUE AS TO
12 WHETHER ADVERTISING IS SIMPLY A WRESTLING MATCH
13 BETWEEN VARIOUS BRANDS OR DOES IT, INDEED, EXPAND
14 THE WHOLE MARKET. DOES IT, IN FACT, LEAD TO
15 GREATER AGGREGATE SALES.
16 Q. OF CIGARETTES?
17 A. YES. OF CIGARETTES.
18 Q. IS THAT IT?
19 A. CERTAINLY, I HAVE DONE A LOT OF
20 READING AND WOULD WANT TO TALK ABOUT THE PUBLIC
21 RELATIONS EFFORTS OF THE CIGARETTE COMPANIES AND
22 MARLBORO AMONG THEM.
23 Q. OKAY, THANKS.
24 I ASKED YOU TO DEFINE ADVERTISING
25 BECAUSE YOU MENTIONED IT EARLIER. I ASKED YOU TO
26 DEFINE CONSUMER --
27 A. -- BEHAVIOR.
28 Q. -- BEHAVIOR AS YOU MENTIONED IT
2510
1 EARLIER. HERE'S A NEW ONE, PUBLIC RELATIONS.
2 WHAT'S THAT?
3 A. IT'S, BROADLY -- LET ME, IF I CAN,
4 BACK UP.
5 THERE'S AN UMBRELLA TITLE THAT IS

6 NOW USED, INTEGRATED MARKETING COMMUNICATION,
7 I.M.C. UNDER THE UMBRELLA OF INTEGRATED MARKETING
8 COMMUNICATIONS, FIRMS DO THEIR BEST TO SHAPE PUBLIC
9 OPINION WITH REGARD TO THE ENTIRE FIRM, THE
10 REPUTATION OF THE COMPANY, IF YOU LIKE. THE
11 COMPANY MAY PRODUCE A WHOLE RANGE OF BRANDS AND
12 THAT EFFORT TO ENHANCE THE REPUTATION OF THE
13 COMPANY IS THE FOCAL POINT OF PUBLIC RELATIONS SO
14 THAT, AND I HAVE DONE RESEARCH WITH REGARD TO THIS,
15 SO THAT AN ENHANCED CORPORATE REPUTATION, AS AN
16 UMBRELLA, COMING OUT OF PUBLIC RELATIONS, WILL
17 SUBSEQUENTLY ENHANCE SPECIFIC ADVERTISING EFFORTS
18 FOR SPECIFIC BRANDS.

19 IT'S ALL TARGETED, OF COURSE, IN
20 THIS INTEGRATED WAY AT EVENTUALLY ENHANCING THE
21 BOTTOM LINE OF THE COMPANY INVOLVED.

22 Q. OKAY, WELL, THANKS.

23 YOU WENT -- I ASKED ABOUT PUBLIC
24 RELATIONS AND YOU WENT TO THE INTEGRATED THING.
25 HAVE YOU, FOR YOUR PURPOSES, HAVE
26 YOU ANSWERED WHAT PUBLIC RELATIONS IS FOR US, IN
27 SHORTHAND?

28 A. I BELIEVE SO. IT IS, AGAIN, TO
2511

1 ENHANCE THE NATURE OF THE PUBLIC'S VIEW OF THE FIRM
2 IN QUESTION AND IT HAS OTHER CONSEQUENCES.

3 Q. REMEMBER YOU MENTIONED TO THE JURY
4 THAT YOU WOULD BE TALKING ABOUT SOME PUBLIC
5 RELATIONS DOCUMENTS IN THE INDUSTRY. REMEMBER
6 THAT?

7 A. YES. I HAVE SPENT QUITE A BIT OF
8 TIME READING THE HILL & KNOWLTON DOCUMENTS.

9 Q. WHAT'S HILL & KNOWLTON?

10 A. JOHN HILL WAS THE PRESIDENT OF
11 HILL & KNOWLTON WHICH WAS A -- THE LARGEST PUBLIC
12 RELATIONS FIRM IN THE COUNTRY. I THINK STILL IS.
13 AND HE LEFT, I GUESS, WHEN HE DIED, HE LEFT HIS
14 PAPERS, INTERNAL MEMOS, DOCUMENTS, TO THE
15 UNIVERSITY OF WISCONSIN. THESE WERE THEN OPEN
16 DOCUMENTS THAT HAVE BEEN STUDIED, CULLED AND
17 AVAILABLE TO THE PUBLIC AND TO EXPERTS. AND SO I
18 HAVE READ SOME OF THOSE.

19 Q. GIVE US A TIMEFRAME WHERE THESE
20 DOCUMENTS EXISTED, PLEASE.

21 A. OH, THEY GO BACK TO ABOUT 1954, ALL
22 THE WAY THROUGH TO, INTO THE '70'S ANYWAY.

23 Q. AND THESE DOCUMENTS FROM '54 INTO
24 THE '70'S, DO THESE DEAL WITH THE TOBACCO INDUSTRY?

25 A. THEY DO. AND IN PARTICULAR, THE
26 CREATION OF AN ENTITY THAT REPRESENTED THE ENTIRE
27 INDUSTRY, THE T.I.R.C., THE TOBACCO INDUSTRY
28 RESEARCH COMMITTEE. AND THEN SUBSEQUENTLY IT'S
2512

1 ANOTHER OUTCOME OF THAT WAS THE T.I., TOBACCO
2 INDUSTRY.

3 Q. INSTITUTE?

4 A. INSTITUTE.

5 Q. ALL RIGHT.

6 ONE LAST THING BEFORE I GET INTO
7 YOUR SPECIFICS. ARE YOU PREPARED TO TALK ABOUT THE
8 MARLBORO ADVERTISING CAMPAIGN, STARTING BACK IN THE
9 MID TO LATE '50'S?

10 A. YES, I AM. AND I HAVE LOOKED AT A

11 GREAT NUMBER OF ADS AND I HAVE THOUGHT AND READ A
12 GOOD DEAL ABOUT THAT AS WELL AS SOME RESEARCH.
13 Q. OKAY. THANK YOU VERY MUCH.
14 NOW, LET'S TALK ABOUT YOU.
15 TELL THE JURY YOUR EDUCATIONAL
16 BACKGROUND, PLEASE. JUST GIVE US WHERE YOU WENT TO
17 UNDERGRADUATE SCHOOL, WHERE YOU GOT YOUR GRADUATE
18 DEGREES AND APPROXIMATE DATES, IF YOU WOULD.
19 A. I RECEIVED A B.A. IN POLITICAL
20 SCIENCE AND SOCIOLOGY FROM MCGILL UNIVERSITY IN
21 MONTREAL IN 1965. I RECEIVED A MASTERS' IN
22 SOCIOLOGY FROM COLUMBIA UNIVERSITY IN 1967.
23 AND A PH.D. FROM THE UNIVERSITY OF
24 ILLINOIS IN MARKETING, I BELIEVE, FORMALLY IN 1972.
25 Q. THANK YOU.
26 TELL US YOUR OCCUPATIONAL
27 BACKGROUND, STARTING WHILE YOU WERE IN GRAD SCHOOL,
28 IF YOU WOULD, PLEASE.
2513

1 A. I -- WELL, I WORKED FOR A MARKETING
2 RESEARCH FIRM FOR A YEAR BEFORE GOING INTO GRAD
3 SCHOOL.
4 Q. START THERE THEN.
5 A. SO IT WAS A YEAR FOR INTERNATIONAL
6 SURVEYS, I BELIEVE, THE NAME OF THE FIRM, THEN WENT
7 ON FOR A MASTER'S AND PH.D., PRETTY MUCH HAD
8 SCHOLARSHIPS AND FELLOWSHIPS ALL THE WAY THROUGH SO
9 I HAD A KIND OF GIFTED LIFE AS A GRADUATE STUDENT.
10 OTHER THAN WORKING ON MY STUDIES, I DIDN'T HAVE TO
11 DO OTHER WORK.
12 BUT THEN WAS HIRED BY MCGILL
13 UNIVERSITY AS AN ASSISTANT PROFESSOR IN MARKETING
14 AND SPENT 21 YEARS THERE WORKING MY WAY UP TO FULL
15 PROFESSOR OF MARKETING AND DIRECTOR, COORDINATOR OF
16 THE MARKETING UNIT THERE.
17 I THEN MOVED TO PENN STATE
18 UNIVERSITY, TEN YEARS AGO, AND WAS AWARDED THE --
19 THE IRVING AND IRENE BAARD, THE BAARD PROFESSORSHIP
20 IN MARKETING.
21 IT'S AN ENDOWED POSITION AND I HAVE
22 BEEN THERE, AS I SAY, FOR THE LAST TEN YEARS. AND
23 I WAS ACTING CHAIR OF THE DEPARTMENT THREE YEARS
24 AGO, TWO YEARS -- TWO YEARS AGO.
25 LAST YEAR I SERVED AS INTERIM DEAN
26 OF THE BUSINESS SCHOOL THERE. OUR POOR DEAN HAD
27 HAD ABOUT 11, 12 YEARS AND COULDN'T TAKE IT ANY
28 MORE AND WANTED TO LEAVE AND I SAID I WOULD DO IT
2514

1 FOR A YEAR UNTIL WE FOUND SOMEONE AND I AM NOW
2 CHAIRMAN OF THE MARKETING DEPARTMENT.
3 Q. HAVE YOU PUBLISHED?
4 A. YES, PROBABLY THE MOST ESSENTIAL
5 RULE IN ALL OF THIS THAT I HAVE IS TO SEEK
6 KNOWLEDGE AND PUBLISH IT. AND IF YOU ARE
7 SUCCESSFUL IN THAT, YOU ARE SUCCESSFUL IN YOUR
8 CAREER, PRETTY MUCH. TEACHING IS IMPORTANT AND ALL
9 THE OTHER THINGS, BUT THE CORE OF WHAT I DO AND THE
10 CORE OF WHAT PEOPLE AT A RESEARCH UNIVERSITY DO IS
11 RESEARCH.
12 Q. SOME OF US HAVE HEARD THE TERM
13 PUBLISH OR PERISH. I AM SURE YOU HAVE HEARD OF
14 THAT?
15 A. THAT'S TRUE. BUT THAT'S ONLY IF

16 YOU DON'T LIKE WHAT YOU ARE DOING. AND I GUESS --
17 WELL, EVEN NOW, SOMETIMES, THE PRESSURE GETS TO
18 YOUNG PEOPLE, BUT I ENJOY THE QUEST FOR KNOWLEDGE.
19 I NEVER FELT THAT WAY AND CERTAINLY -- AND I HAVE
20 TENURE. IT'S KIND OF A GUARANTEED POSITION. AND I
21 STILL CONTINUE TO DO IT BECAUSE IT IS SATISFYING.

22 Q. GIVE US AN IDEA OF HOW MANY TIMES
23 YOU PUBLISHED, PLEASE.

24 A. I NEVER COUNT VERY CLOSELY. BUT I
25 AM SURE SOMETHING LIKE 30 PUBLISHED ARTICLES AND
26 PROBABLY 50 PRESENTATIONS OR 70 PRESENTATIONS AT
27 VARIOUS CONFERENCES, ET CETERA.

28 Q. I'D LIKE YOU TO TELL -- I'D LIKE TO
2515

1 STAY WITH YOUR QUALIFICATIONS AGAIN. I'D LIKE YOU
2 TO TELL THE JURY ABOUT EITHER SOME COMMITTEES YOU
3 HAVE BEEN ON OR SOME GROUPS YOU HAVE BEEN ON THAT
4 YOU THINK ARE RELEVANT TO WHAT YOU ARE GOING TO
5 TELL THEM ABOUT, PLEASE.

6 A. BROADLY, I AM ON THE EDITORIAL
7 BOARDS OF FOUR OF THE KEY JOURNALS IN MY FIELD,
8 THAT IS TO SAY, I AM ONE OF A SMALL GROUP OF
9 PEOPLE, SOMEWHERE BETWEEN 30 AND PERHAPS 70 THAT
10 EVALUATE THE RESEARCH THAT COMES INTO THESE
11 JOURNALS TO ASSESS WHETHER THEY ARE WORTHY OF
12 PUBLICATION IN A PEER REVIEW PROCESS.
13 SO THE FIRST THING THAT I WOULD SAY
14 THAT I SPEND A FAIR AMOUNT OF TIME ASSESSING IS THE
15 MERITS OF RESEARCH AS AN EDITORIAL BOARD MEMBER.
16 MUCH MORE SPECIFICALLY, I HAVE
17 SERVED ON THE, HERE IN CALIFORNIA, ON A STUDY PANEL
18 FOR THREE OR FOUR YEARS, IT WAS EARLIER IN THE
19 DECADE, TO LOOK AT PROPOSALS FOR CIGARETTE RELATED
20 RESEARCH WHEN THE PROPOSITION 99 GUIDED RESEARCH
21 WAS PREVALENT.

22 SO I WAS ONE OF, PERHAPS, A DOZEN
23 PEOPLE THAT CAME OUT HERE TO LOOK AT WHICH RESEARCH
24 SHOULD BE FUNDED AND WHICH SHOULD NOT BE FUNDED BY
25 WAY OF LOOKING AT CIGARETTE RELATED ISSUES IN
26 CALIFORNIA.

27 Q. LET'S STAY WITH THAT FOR A COUPLE
28 MINUTES.

2516

1 WHEN WAS THAT?

2 A. IT WAS '92, '93, '94, IT'S IN --

3 Q. WHO ASKED YOU, YOU WOULD HAVE BEEN
4 AT PENN STATE UNIVERSITY THEN, WHO ASKED YOU TO
5 COME OUT HERE FROM PENNSYLVANIA TO CALIFORNIA TO
6 HELP ON THAT EFFORT?

7 A. I FORGET THE FELLOW'S NAME BUT IT
8 WAS THE HEAD OF THE RESEARCH WING OF THIS EFFORT TO
9 FUND CALIFORNIA RESEARCHERS DOING RESEARCH,
10 CIGARETTE-RELATED RESEARCH.

11 Q. AND WHAT, EXACTLY, DID YOU DO HERE
12 IN CALIFORNIA THEN, PLEASE.

13 A. WE HAD -- I HAD COME OUT EACH -- IT
14 WAS ABOUT THREE OR FOUR TIMES. I HAD COME OUT AND
15 SPENT ABOUT THREE DAYS WHERE WE WERE GIVEN -- WELL,
16 AHEAD OF TIME, WE WERE SENT ABOUT, IT SEEMS TO ME,
17 20 RESEARCH PROPOSALS AND HAD TO EVALUATE THEM AS
18 TO THEIR MERITS AND POTENTIAL USEFULNESS, IF THEY
19 WERE DONE, WOULD THEY BE CLEAR AND VALID RESEARCH
20 AND THEN WE WOULD GET TOGETHER ON THIS PANEL,

21 HAVING GIVEN SOME PRIOR READINGS TO IT, BUT WE
22 STILL HAVE SCOPE TO DISCUSS THINGS AND INFLUENCE
23 ONE ANOTHER IN A SENSE AS TO HOW GOOD OR BAD EACH
24 PROPOSAL WAS. AND WE WOULD NARROW IT DOWN TO A
25 PRIORITY RANKING AS TO WHICH SHOULD BE FUNDED
26 FIRST, SECOND, THIRD, WE NEVER KNOW HOW MUCH TOTAL
27 DOLLARS THERE WERE, BUT WE HAD GIVEN IT PRIORITY.
28 Q. I AM SORRY TO INTERRUPT.

2517

1 A. SO WE WOULD THEN, IN THE END, THE
2 VARIOUS RESEARCH PROPOSALS WOULD RECEIVE A PRIORITY
3 RANKING. THIS LOOKS LIKE IT IS THE VERY BEST AND
4 PERHAPS IT SHOULD BE FUNDED, ALL THE WAY DOWN TO
5 THIS DOESN'T REALLY LOOK VERY WORTHWHILE.

6 Q. SO FAR, THOUGH, I AM NOT REALLY
7 SURE WHAT KINDS OF THINGS YOU ARE TALKING ABOUT.
8 IN MARKETING AND ADVERTISING DID

9 YOU HAVE SOMETHING TO DO WITH THE KINDS OF
10 ANTI-SMOKING ADS WE SEE ON TELEVISION SOMETIMES?

11 A. YES. THERE WERE DIFFERENT PANELS,
12 THERE WERE PANELS THAT WERE FOCUSED ON THE MEDICAL
13 SIDE, MEDICAL SCIENCE SIDE OF THE RESEARCH. I WAS
14 ON THE -- I FORGET THE TITLE, BUT CERTAINLY I
15 FOCUSED ON THE ADVERTISING RELATED ISSUES, YES.

16 Q. SO AS PART OF YOUR JOB, DID YOU
17 HAVE ANYTHING TO DO WITH THE ADS THAT WE SOMETIMES
18 SEE ON TELEVISION?

19 A. I HAVE SOMETHING TO DO WITH SOME OF
20 THE ANTI-ADS YOU SEE ON TELEVISION.

21 Q. THAT'S WHAT I MEANT.

22 A. YES. IN FACT, THERE'S A RESEARCHER
23 DOWN AT IRVINE THAT, I RECALL, VERY SPECIFICALLY,
24 LOOKING AT THAT RESEARCH AND SHE'S GONE FORWARD
25 WITH IT -- AND I WAS SO IMPRESSED, I ENDED UP, I
26 HAD SEEN HER BEFORE, GETTING TO KNOW HER AND YEARS
27 LATER GOT INTO A RESEARCH PROJECT WITH HER MYSELF.

28 Q. OKAY, THANK YOU.

2518

1 HAVE YOU PUBLISHED OR EDITED BOOKS
2 OR BOOK CHAPTERS?

3 A. YES. I -- ONE OF THE WAYS THAT I
4 LOOK AT MARKETING IS THAT THERE'S A FIELD CALLED
5 SOCIAL MARKETING AND IF YOU LIKE, I AM KIND OF ONE
6 OF THE FOUNDERS OF THAT.

7 IT IS AN EFFORT TO USE MARKETING
8 FOR POSITIVE SOCIAL END. AND IT COULD BE I HAVE
9 GOT A CHAPTER THAT TALKS ABOUT REDUCING VIOLENCE IN
10 HOCKEY AND --

11 Q. GOOD LUCK.

12 A. AND IT'S, ESSENTIALLY, FOCUSED ON A
13 VARIETY OF LIFESTYLE ISSUES AND HOW TO IMPROVE, USE
14 MARKETING TO IMPROVE HEALTH, FOR EXAMPLE, ANTI-DRUG
15 EFFORTS AND SMOKING AS WELL.

16 I STARTED A CONFERENCE CALLED
17 "INNOVATIONS IN SOCIAL MARKETING," AGAIN, BACK
18 ABOUT FIVE OR SIX -- WELL, IT'S IN ITS SEVENTH YEAR
19 NOW, AND IT TRACKS A VARIETY OF BOTH PRACTITIONERS
20 AND ACADEMICS. AND THE EFFORT IS TO, AGAIN, USE
21 MARKETING TO POSITIVE SOCIAL ENDS.

22 THE FIRST CONFERENCE PROVIDED A
23 GROUNDS FOR PULLING TOGETHER THE BEST OF THE PAPERS
24 THAT WERE PRESENTED THERE AND WE ACTUALLY WORKED TO
25 IMPROVE THEM THROUGH SOME PEER REVIEWS. AND THEY

26 WENT INTO A BOOK CALLED "SOCIAL MARKETING" OF WHICH
27 I AM THE LEAD EDITOR.

28 Q. RIGHT NOW, ARE YOU CURRENTLY
2519

1 INVOLVED IN RESEARCH OVERSEAS THAT HAS TO DO WITH
2 SMOKE AND TOBACCO?

3 A. YES. I, ON SABBATICAL, ENDED UP
4 LIVING IN HONG KONG FOR A YEAR THREE YEARS AGO AND
5 WAS INTRIGUED BY THE, JUST WALKING DOWN THE STREET,
6 IT WAS REALLY A SITE TO BEHOLD WHEN YOU SEE THE
7 MARLBORO MAN ON A 30-STORY BUILDING, THE WHOLE SIDE
8 OF THE BUILDING WAS THE MARLBORO COWBOY.
9 AND IF YOU ARE A RESEARCHER, YOU
10 SCRATCH YOUR HEAD AND SAY I WONDER HOW PEOPLE REACT
11 TO THAT. AND THEN YOU GO INTO THE KIND OF YUPPIE
12 BAR AREA AND WHOLE STREETS ARE BRIDGED WITH
13 MARLBORO SIGNS.

14 NOW, THAT WAS THEN. THERE'S,
15 HOPEFULLY, A CHANGE THAT A LAW WAS PASSED, I THINK,
16 THAT HAS SERVED TO INURE THAT A YEAR AGO. BUT WHEN
17 I WAS THERE. THERE WAS CERTAINLY GOOD CAUSE TO SAY
18 WHAT KIND OF EFFECT DOES ALL THIS HAVE.

19 AND I HAD OCCASION TO MEET SOMEONE
20 INVOLVED IN AN ANTI-SMOKING EFFORT IN THAILAND AND
21 RAN PARALLEL STUDIES, REALLY, TO LOOK AT THE
22 POTENTIAL IMPACT OF THESE PREDOMINANT KIND OF
23 ADVERTISING IN THOSE COUNTRIES.

24 Q. SO YOUR RESEARCH, FOREIGN RESEARCH
25 REGARDING TOBACCO, HAS BEEN IN HONG KONG AND
26 THAILAND?

27 A. YES.

28 Q. IN MY QUESTION, I DIDN'T ASK
2520

1 ANYTHING ABOUT MARLBORO. I SIMPLY ASKED ABOUT
2 TOBACCO AND YOU CAME BACK AT ME WITH MARLBORO. SO
3 I'D LIKE TO STAY WITH THAT FOR A SECOND.
4 IS MARLBORO THE NUMBER 1 BRAND
5 THERE AS FAR AS ADVERTISING IS CONCERNED IN
6 HONG KONG?

7 A. IT, BY FAR, IS. AT LEAST THE TIME
8 I WAS THERE, IT JUST DOMINATED AND SO DID THE
9 PREFERENCES, PRETTY MUCH, OF THE KIDS THAT I
10 INTERVIEWED.

11 Q. WHAT ABOUT IN THAILAND?

12 A. THERE TOO. AMONG FOREIGN BRANDS,
13 THEY HAD SOME FAIRLY STRONG DOMESTIC BRANDS, BUT IT
14 WAS KIND OF INTERESTING, AMONG THE PEOPLE THAT KIND
15 OF REMEMBERED MARLBORO ADS, THEY WERE INFLUENCED
16 AND CERTAINLY MORE LIKELY TO SMOKE MARLBORO.

17 Q. YOU ARE SAYING THIS AS A RESULT OF
18 YOUR RESEARCH?

19 A. YES.

20 Q. SO BEFORE I LEAVE THIS TOPIC HERE
21 AND GO BACK TO YOUR QUALIFICATIONS, IN THAILAND,
22 MARLBORO WAS THE NUMBER ONE FOREIGN CIGARETTE.
23 IN HONG KONG WAS MARLBORO THE
24 NUMBER 1 FOREIGN CIGARETTE OR THE NUMBER 1
25 CIGARETTE, PERIOD?

26 A. WELL, THE NUMBER 1 CIGARETTE,
27 BECAUSE THERE'S NOT MUCH ROOM TO GROW TOBACCO IN
28 HONG KONG. SO THERE AREN'T ANY DOMESTIC
2521

1 CIGARETTES.

2 Q. OKAY. AND ARE YOU SAYING FOR REAL
3 THAT THE COWBOY WAS 30 STORIES HIGH?
4 A. OH, YES. THEY HAVE, YOU KNOW,
5 THERE'S NOT MUCH LAND IN HONG KONG SO THEY HAVE
6 THESE TALL SKINNY SKYSCRAPERS. AND IN A NUMBER OF
7 CASES THE WHOLE SIDE OF THE BUILDING WOULD BE A
8 MARLBORO MAN AD.
9 Q. LET'S GO BACK TO YOUR
10 QUALIFICATIONS THEN.
11 ARE YOU ON ANY KIND OF COMMITTEES
12 OR SOCIETIES, WE HAVE TALKED ABOUT CALIFORNIA NOW,
13 BUT ANY COMMITTEES OR SOCIETIES THAT YOU THINK THIS
14 JURY SHOULD KNOW ABOUT, THAT YOU THINK IS RELEVANT
15 TO WHAT YOU ARE GOING TO SAY?
16 A. I KNOW THAT I HAVE SERVED AS THE
17 PRESIDENT OF THE SOCIETY FOR CONSUMER PSYCHOLOGY.
18 Q. WHAT'S THAT?
19 A. THAT IS A DIVISION OF THE AMERICAN
20 PSYCHOLOGICAL ASSOCIATION AND IT FOCUSES ON
21 CONSUMER PSYCHOLOGY, THE PSYCHOLOGY OF THE
22 CONSUMER, AND IT IS NOT FAR FROM A PARALLEL TO, AND
23 REALLY, NOT VERY DIFFERENT FROM CONSUMER BEHAVIOR.
24 FOCUS IS ON PSYCHOLOGY AS OPPOSED TO, SAY,
25 ANTHROPOLOGY.
26 Q. OKAY.
27 HAVE YOU BEEN AN EDITORIAL BOARD
28 MEMBER FOR THE "JOURNAL OF CONSUMER RESEARCH"?
2522
1 A. YES, I HAVE.
2 Q. THE "JOURNAL OF PUBLIC POLICY AND
3 MARKETING"?
4 A. YES, I HAVE.
5 Q. "JOURNAL OF CONSUMER PSYCHOLOGY"?
6 A. I HAVE AND CONTINUE TO BE SO.
7 Q. "JOURNAL OF SOCIAL MARKETING"?
8 A. YES, I HAVE AND CONTINUE TO DO SO.
9 Q. "PSYCHOLOGY AND MARKETING"?
10 A. I HAVE. THAT'S TERMINATED.
11 Q. I THINK THAT'S ENOUGH.
12 MR. LEITER: OBJECT TO THE COMMENT.
13 THE COURT: SUSTAINED.
14 MR. PIUZE: I APOLOGIZE. WITHDRAW.
15 I AM NOT GOING TO ASK YOU ANY MORE.
16 Q BY MR. PIUZE: START WITH A BOTTOM
17 LINE QUESTION. DOES ADVERTISING PROMOTE THE USE OF
18 CIGARETTES?
19 A. ALMOST BY DEFINITION. THERE IS AN
20 OVERWHELMING AMOUNT OF MONEY SPENT ON ADVERTISING
21 FOR CIGARETTES. IT IS EFFECTIVE AND I DON'T THINK
22 THE INDUSTRY WOULD BE THE SAME WITHOUT IT.
23 Q. WHEN YOU TALK ABOUT AN OVERWHELMING
24 AMOUNT OF MONEY, WHAT DO YOU HAVE IN MIND?
25 A. THE FIGURES, ADVERTISING AND
26 PROMOTION OVER THE LAST YEARS, HAVE BEEN FIVE AND
27 SIX BILLION DOLLARS. IT'S AN ENORMOUS AMOUNT OF
28 MONEY.
2523
1 Q. WHAT IF I WERE TO SAY TO YOU THAT
2 ALL ADVERTISING DOES IS KEEPS PEOPLE SMOKING CAMELS
3 VERSUS WINSTONS VERSUS MARLBOROS, AND THAT'S ALL IT
4 DOES; IT'S JUST A CONTEST BETWEEN DIFFERENT BRANDS.
5 DO YOU AGREE WITH THAT OR DISAGREE THAT?
6 A. NO, I DISAGREE WITH THAT. I THINK

7 IT'S VERY IMPORTANT TO THINK THROUGH THAT -- THIS
8 IS NOT JUST A CONTEST BETWEEN BRANDS. THERE ARE A
9 NUMBER OF INSTANCES WHERE WE HAVE VERY CLEAR
10 EVIDENCE THAT ADVERTISING, SAY, FOR ONE BRAND, NOT
11 ONLY DOES THAT ONE BRAND VERY WELL, BUT THE ENTIRE
12 SEGMENT.

13 SO WHEN JOE CAMEL WAS VERY POPULAR,
14 THAT INCREASED THE SALES OF CAMEL CIGARETTES --
15 MR. LEITER: OBJECTION, RELEVANCE, WE
16 HAVE MOTION IN LIMINES ON THESE ISSUES.
17 THE COURT: I THINK WE NEED TO TAKE A
18 FEW, MAYBE A COUPLE MINUTES WITH COUNSEL AND THE
19 COURT JUST TO MAKE SURE WE KNOW WHERE THIS IS
20 GOING. AND, LADIES AND GENTLEMEN, LET'S TAKE ABOUT
21 15-MINUTE BREAK. THIS WILL PROBABLY BE OUR ONLY
22 BREAK TODAY. SO BE BACK HERE AT QUARTER TILL.
23 ALL RIGHT. THIS IS A GOOD TIME TO
24 BREAK ANYWAY BECAUSE WE ARE JUST GOING INTO A NEW
25 SUBJECT MATTER.

26 THANK YOU, SIR, YOU MAY STEP DOWN.

27 /// /// ///

28 /// /// ///

2524

1 THE COURT: OUR JURY PANEL IS NO LONGER
2 WITH US. COUNSEL ARE PRESENT ONLY.
3 I HAVE CIPOLLONE IN MY HAND. I
4 HAVE READ THE CASE SEVERAL TIMES SINCE OUR LAST
5 DISCUSSION. I ALSO WENT BACK AND REVIEWED MY
6 RULINGS IN THE MOTION IN LIMINE.
7 TO BEGIN THIS DISCUSSION, IT IS IN
8 MY ORDER, I INTENDED TO AND DID INDICATE TO PARTIES
9 THAT IT'S THIS COURT'S VIEW THAT CIPOLLONE REJECTED
10 THE IMPLIED PREEMPTION THEORY.
11 AND THE 1969 ACT DOES NOT BAR
12 EVIDENCE OF ADVERTISING AND PROMOTION FOR PURPOSES,
13 FOR ALL PURPOSES IN THIS CASE.
14 NOW, WHAT'S HAPPENING IS THAT AS
15 SOON AS WE EVEN GET INTO THE AREA, COUNSEL FOR THE
16 DEFENDANT IMMEDIATELY STANDS UP, CITES THE MOTION
17 IN LIMINE AND OBJECTS, BEFORE WE EVEN GET EVEN
18 SLIGHTLY INTO THE AREA, WHICH CAUSES THE COURT TO
19 VERY QUICKLY -- AND MOVE FOR A MISTRIAL, IN A
20 SITUATION IN WHICH THAT, THE SUBJECT HAD BEEN
21 TOUCHED. BUT IN THAT CONTEXT, WE HAD A WITNESS WHO
22 WAS REFERRING TO ADS IN A CONTEXT WHERE IT WAS
23 RELEVANT FOR REASONS OTHER THAN POST-1967 FAILURES
24 TO WARN OR FOR SOME NEUTRALIZATION CLAIM BASED ON
25 INCLUSIONS OR OMISSIONS IN ADVERTISING, BUT FOR AN
26 ENTIRELY DIFFERENT PURPOSE, WHICH THE SUPREME COURT
27 DID NOT BAR BY ITS DECISION IN CIPOLLONE.

28 SO THAT HAVING BEEN SAID, AS A

2525

1 BACKGROUND FOR THIS, FIRST OF ALL, JUST FOR GOOD
2 ORDER OF THE CASE, IT'S GOING TO BE VERY IMPORTANT,
3 I CAN GIVE COUNSEL A RUNNING OBJECTION AND WILL TO
4 THIS WHOLE AREA. AND THAT'S NOT TO SAY THAT I
5 DON'T WANT TO LISTEN WHEN WE REACH POINTS WHERE WE
6 NEED TO DEAL WITH THESE ISSUES.
7 BUT I AM JUST HOPING THAT THEY WILL
8 BE PINPOINTED, LET'S PUT IT THAT WAY.
9 MR. LEITER: IF I MAY, YOUR HONOR, I DO
10 WANT TO ADDRESS THE PREEMPTION QUESTION, BUT I
11 THINK WE HAVE A LITTLE BIT OF CONFUSION HERE.

12 MY OBJECTION JUST BEFORE WAS NOT ON
13 PREEMPTION GROUNDS.
14 THE COURT: FAIR ENOUGH.
15 MR. LEITER: THERE ARE OTHER MOTIONS IN
16 LIMINE RULINGS, AND THERE WERE TWO OF THEM THAT I
17 HAVE IN MIND. ONE DEALT SPECIFICALLY WITH
18 MISCONDUCT BY OTHER COMPANIES THAT WAS NOT PART OF
19 THE CONSPIRACY. WE TALKED ABOUT JOE CAMEL
20 SPECIFICALLY WHICH WAS A REYNOLDS' CAMPAIGN,
21 ADVERTISING CAMPAIGN. AND MR. PIUZE SAID HE HAD NO
22 INTENTION OF GETTING INTO JOE CAMEL.
23 IT'S NOT MY CLIENT'S CONDUCT, IT'S
24 NOT PART OF THE ALLEGED CONSPIRACY. IT'S AN
25 ADVERTISING CAMPAIGN BY A COMPANY THAT IS NOT A
26 PARTY TO THIS LAWSUIT.
27 SO MY OBJECTION WAS NOT ON
28 PREEMPTION GROUNDS. IT WAS TO RELEVANCE GROUNDS IN
2526
1 AN AREA THAT MR. PIUZE SPECIFICALLY SAID WHEN WE
2 ADDRESSED MOTIONS IN LIMINE HE WASN'T GOING TO GET
3 INTO, THAT'S OF THE FIRST MOTION IN LIMINE THAT I
4 WAS CONCERNED ABOUT.
5 THE SECOND IS WE HAD A SEPARATE
6 MOTION IN LIMINE ON THE ISSUE OF YOUTH TARGETING
7 AFTER MR. BOEKEN BECAME AN ADULT.
8 NOT PREEMPTION, RELEVANCE.
9 AND THE COURT'S RULING ON THAT
10 MOTION IN LIMINE, AND I AM READING FROM YOUR
11 HONOR'S ORDER, EVIDENCE REGARDING ALLEGED PROMOTION
12 OF UNDER-AGE SMOKING, DENIED AS TO YOUTH-RELATED
13 ADVERTISING OCCURRING WHILE MR. BOEKEN WAS A YOUTH
14 IS GRANTED CONDITIONALLY AS TO PURELY YOUTH-RELATED
15 ADVERTISING AND TARGETING EVIDENCE OCCURRING DURING
16 MR. BOEKEN'S ADULT LIFE UNLESS AND UNTIL AN
17 ADEQUATE EVIDENTIARY FOUNDATION IS LAID THAT EITHER
18 YOUTH TARGETING ADVERTISING ONGOING DURING HIS A
19 ADULT IS PART OF A CONTINUING PLAN OR PRACTICE
20 INITIATED DURING HIS YOUTH OR THAT YOUTH TARGETED
21 ADVERTISING OCCURRING DURING HIS ADULT LIFE
22 INFLUENCED HIS ADULT SMOKING DECISIONS.
23 AND THERE'S A COUPLE OTHER
24 SENTENCES AFTER THAT.
25 MY OBJECTION JUST NOW WERE ON THOSE
26 TWO MOTIONS IN LIMINE, NOT ON PREEMPTION GROUNDS.
27 AND IF YOUR HONOR WOULD LIKE, I
28 WOULD LIKE TO, NOW THAT PREEMPTION HAS COME UP --
2527
1 THE COURT: JUST PUT IT ON THE TABLE.
2 MR. LEITER: THOSE WERE THE GROUNDS FOR
3 MY OBJECTION JUST NOW, NOT PREEMPTION.
4 AS TO THE PREEMPTION ISSUE THAT
5 CAME UP BEFORE, AND I DIRECT THE COURT TO THE
6 CIPOLLONE CASE, AND THIS IS 505 U.S. AT PAGE 527.
7 IT IS THE SECTION BEGINNING
8 "FRAUDULENT MISREPRESENTATION."
9 THE COURT: I HAVE IT IN YELLOW.
10 MR. LEITER: AND THE SUPREME COURT SAYS
11 THAT THERE WERE TWO THEORIES OF FRAUDULENT
12 MISREPRESENTATION. FIRST THAT RESPONDENTS, THROUGH
13 THEIR ADVERTISING, NEUTRALIZED THE EFFECT OF
14 FEDERALLY MANDATED WARNING. THAT'S THE
15 NEUTRALIZATION CLAIM. AND IT SAYS AT THE END OF
16 THAT PARAGRAPH THAT THAT CLAIM IS PREEMPTED.

17 AND THEN IN THE NEXT PARAGRAPH, IT
18 EXPLAINS WHAT IT MEANS.
19 AND IT IS TALKING ABOUT THE FEDERAL
20 TRADE COMMISSION WHICH IS RESPONSIBLE FOR THE
21 WARNING LABELS THAT ARE OF THE OPINION, TALKING
22 ABOUT HOW CIGARETTE ADVERTISING COULD ASSOCIATE
23 CIGARETTE SMOKING WITH POSITIVE ATTRIBUTES SUCH AS
24 CONTENTMENT, GLAMOR, ROMANCE, YOUTH, HAPPINESS, AT
25 THE SAME TIME SUGGESTING THAT SMOKING IS AN
26 ACTIVITY AT LEAST CONSISTENT WITH PHYSICAL HEALTH
27 AND WELL-BEING.
28 AND THEN IT TALKS ABOUT THE FEDERAL
2528
1 TRADE COMMISSION TALKING ABOUT REGULATING THAT KIND
2 OF ADVERTISING.
3 THIS SECTION, AND I AM GOING TO
4 JUMP DOWN TO THE BOTTOM OF THAT PARAGRAPH WHICH IS
5 NOW AT THE BEGINNING OF PAGE 528:
6 "IN THIS LIGHT, IT SEEMS
7 QUITE CLEAR THAT PETITIONER'S FIRST
8 THEORY OF FRAUDULENT MISREPRESENTATION
9 IS INEXTRICABLY RELATED TO
10 PETITIONER'S FIRST FAILURE TO WARN
11 THEORY, A THEORY THAT WE HAVE ALREADY
12 CONCLUDED IS LARGELY PREEMPTED BY
13 SECTION 5(B)."
14 MY OBJECTION BACK BEFORE WHEN WE
15 HAD THE DISCUSSION ABOUT IT WAS WHEN THE WITNESS
16 WAS TALKING ABOUT -- THE QUESTION WAS, IF I
17 REMEMBER, AND I APOLOGIZE IF IT IS NOT EXACTLY
18 RIGHT, THE QUESTION WAS, WELL, IF THERE ARE THESE
19 WARNINGS, WHY DO PEOPLE CONTINUE TO SMOKE AND THE
20 WITNESS'S ANSWER WAS BECAUSE THE ADS PORTRAY PEOPLE
21 AS HEALTHY, SEXY, GLAMOROUS.
22 THAT'S PRECISELY THE NEUTRALIZATION
23 CLAIM AND THAT'S PRECISELY WHAT'S PREEMPTED.
24 THE COURT: OF COURSE, YOU ARE ARGUING AN
25 END TO THAT CLAIM.
26 THIS -- WE HAD AN EXPERT WITNESS UP
27 HERE WHO SAID THAT PEOPLE WHO ARE ADDICTED TO
28 NICOTINE WILL LOOK FOR EXCUSES, ANY EXCUSE THEY CAN
2529
1 FIND, AND THEY WILL LATCH ONTO -- THEY MIGHT LATCH
2 ONTO AN AD, THEY MIGHT LATCH ONTO THE MARLBORO MAN,
3 THEY MIGHT LATCH ONTO SOMETHING ELSE THAT HAS
4 NOTHING TO DO WITH THE ADVERTISING.
5 NOW, THAT, FROM THIS COURT'S
6 PERSPECTIVE, IS A PERFECTLY LEGITIMATE STATEMENT
7 FROM THIS WITNESS IN LIGHT OF THE STATUTE, THE
8 STATUS OF THIS CASE, THE CLAIMS THAT ARE BEING MADE
9 AND THE CIPOLLONE CASE.
10 MR. LEITER: WHAT YOUR HONOR SAID I DON'T
11 BELIEVE IS PREEMPTED. BUT MY UNDERSTANDING WHAT
12 THE WITNESS SAID IS WHEN THE WITNESS STARTED
13 TALKING ABOUT HEALTHY, HAPPY, SEXY PEOPLE AND
14 THAT'S YEAH PEOPLE SMOKE DESPITE THE WARNINGS, IN
15 MY OPINION, YOUR HONOR, WITH ALL RESPECT, THAT'S A
16 NEUTRALIZATION CLAIM. ANYWAY, THAT'S THE ARGUMENT
17 WE HAD BEFORE.
18 THE COURT: SO WE ARE BOTH ON THE RECORD.
19 SO THE COURT OF APPEAL WILL UNDERSTAND US, BECAUSE
20 YOU HAVE MADE A MISTRIAL MOTION, AND IF THIS GOES
21 ON APPEAL, I ANTICIPATE YOU WILL ATTEMPT TO GET

22 THIS CASE REVERSED ON THE BASIS OF THAT MOTION. I
23 SEE ABSOLUTELY NO BASIS FOR IT.
24 MR. PIUZE: CAN I JUMP IN HERE.
25 THE COURT: NO, WE ARE HAVING A
26 DISCUSSION.
27 MR. PIUZE: I APOLOGIZE.
28 THE COURT: THANK YOU.
2530

1 MR. LEITER: I UNDERSTAND YOUR HONOR'S
2 DECISION, BUT JUST TO BRING US BACK TO WHAT
3 HAPPENED JUST NOW, THIS WAS NOT A PREEMPTION
4 OBJECTION.
5 THE COURT: NOW, MR. PIUZE.
6 MR. PIUZE: I APOLOGIZE FOR JUMPING THE
7 GUN BY 15 SECONDS.
8 ON THE DAY THAT A WITNESS TESTIFIED
9 ABOUT ADDICTION WAS DR. BENOWITZ, THAT WAS ONE OF
10 ABOUT SEVEN OR EIGHT DAYS WHEN I WAS SICK BETWEEN,
11 SOMEPLACE BETWEEN SIX AS A DOG AND JUST FEELING
12 CRUMMIE. SO I BASICALLY GAVE ON THE SUBJECT AND I
13 AM JUST TELLING WHOEVER IS GOING TO LISTEN TO THIS
14 IN THE FUTURE, AT THE TIME I SAID "I AM BEING
15 OVERLY CAUTIOUS" AND I GAVE ON THE SUBJECT.
16 YOUR HONOR RECOLLECTION IS EXACTLY
17 RIGHT, IT DOESN'T COME UP THE WAY MR. LEITER SAID
18 AT ALL. AND WHAT HAPPENED WAS THE ADDICTION EXPERT
19 SAID EXACTLY WHAT THE COURT JUST FINISHED SAYING,
20 WHEN SOMEONE IS ADDICTED, THEY GRASP AT STRAWS AND
21 IT MAY BE SOMETHING LIKE THESE ADS HERE AND THE
22 THING ABOUT HEALTH.
23 IT WAS NOT -- WE WERE NOT ATTACKING
24 THE PREEMPTION AND I AM NOT TRYING TO DO THAT. AND
25 I HAVE HAD NO ONE SAY THAT THOSE WARNINGS ARE
26 WRONG. AND I HAVE NOT ATTACHED THE WARNINGS AND I
27 DON'T INTEND TO.
28 THAT'S HISTORY.

2531

1 NOW, FOR THE PRESENT, RIGHT NOW, I
2 AM NOT -- HE DIDN'T BRING UP JOE CAMEL TO MY
3 KNOWLEDGE AS ANYTHING HAVING TO DO WITH TARGETING
4 YOUTH SMOKING.
5 HE DIDN'T BRING UP JOE CAMEL AS AN
6 EXAMPLE OF MISCONDUCT. THAT'S NOT HOW HE BROUGHT
7 IT UP AT ALL.
8 HE IS SIMPLY TALKING ABOUT THE FACT
9 THAT IF ONE AD CAMPAIGN, IT'S LIKE A RISING TIDE
10 FLOATS ALL SHIPS. THAT'S BASICALLY WHAT HE IS
11 SAYING IN A DIFFERENT WAY.
12 AN AD CAMPAIGN FOR ONE SPECIFIC
13 BRAND CAN LIFT EVERYBODY. IT'S NOT AN INTERMURAL
14 FIGHT BETWEEN BRANDS BECAUSE, YOUR HONOR, I
15 REPRESENT TO THE COURT THAT BASED ON THE EXPERT
16 WITNESS DISCOVERY I HAVE DONE IN THIS CASE, I
17 ANTICIPATE PHILIP MORRIS IS GOING TO BRING IN
18 EXPERT WITNESSES WHO ARE GOING TO SAY PEOPLE DO NOT
19 SMOKE BECAUSE OF ADVERTISING, THEY SMOKE A
20 PARTICULAR BRAND BECAUSE OF ADVERTISING. BUT IT IS
21 JUST A FIGHT BETWEEN BRANDS. IT'S NOT THAT PEOPLE
22 ACTUALLY START BECAUSE OF ADVERTISING.
23 THAT'S MY UNDERSTANDING OF WHAT
24 THEY ARE GOING TO SAY. AND I AM ATTACKING THAT
25 RIGHT NOW, HEAD ON. THERE'S NOTHING WRONG WITH
26 THAT. AND IT IS NOT VIOLATING ANY MOTION IN

27 LIMINE. NO ONE HAS ACCUSED JOE CAMEL OF MISCONDUCT
28 HERE AND I DON'T INTEND TO DO SO.

2532

1 SECOND, AS FAR AS YOUTH TARGETING
2 IS CONCERNED, MR. BOEKEN WAS CERTAINLY TARGETED AS
3 A YOUTH AND WE ARE GOING RIGHT -- WE ARE GOING
4 RIGHT THERE.
5 AS FAR AS YOUTH TARGETING AFTER
6 MR. BOEKEN BECAME AN ADULT IS CONCERNED, MR. LEITER
7 QUOTED BACK TO THE COURT ITS OWN WORDS IN ITS OWN
8 ORDER WHICH SAID, "CONDITIONALLY GRANTED AT THAT
9 TIME UNLESS YOU CAN SHOW THAT IT'S A CONTINUING
10 COURSE OF CONDUCT."
11 WELL, I BELIEVE I CAN EASILY SHOW
12 IT IS A CONTINUING COURSE OF CONDUCT. RIGHT UP TO
13 AND THROUGH 1996, WHEN --
14 THE COURT: WE DON'T NEED TO GET INTO THE
15 EVIDENCE THERE. THE EVIDENCE FOR AN OFFER OF PROOF
16 IS NOT NECESSARY. I WOULD SAY THIS, HOWEVER, TO
17 COUNSEL, THAT MR. LEITER IS CORRECT ABOUT THE
18 COURT'S APPROACH TO THIS, AND I THINK MAYBE WHAT
19 NEEDS TO BE DONE IS THAT THE FOUNDATION NEEDS TO BE
20 LAID IN THE OPPOSITE DIRECTION OR NEED TO GO BACK
21 INTO THE EARLIER YEARS AND WORK OUR WAY FORWARD.
22 BUT COUNSEL IS ABSOLUTELY RIGHT IN
23 HIS INTERPRETATION OF THE CONDITIONAL GRANTING AND
24 IF IT WERE TO APPEAR THAT THERE IS SUFFICIENT
25 EVIDENCE TO SHOW ON-GOING PATTERN AND PRACTICE ARE
26 SUCH THAT THE CONDUCT THAT HAS GONE ON IN THE LATER
27 YEARS WOULD SERVE TO REINFORCE OR PROVE THE INTENT
28 OR EXISTENCE OR PURPOSE OF THE CONDUCT THAT HAS

2533

1 ALREADY BEEN PROVED IN THE PRIOR YEARS, THEN THE
2 COURT'S CONDITIONAL GRANTING OF THE MOTION IN
3 LIMINE WOULD CHANGE.
4 MR. PIUZE: THANK YOU.
5 MR. LEITER: I HAVE NOTHING FURTHER, YOUR
6 HONOR.
7 THE COURT: ALL RIGHT.
8 LET'S BRING -- LET'S TAKE ABOUT
9 FIVE MINUTES. TAKE A BREATH, COME A BACK IN.

10

11 (AT THIS TIME, A RECESS
12 WAS TAKEN.)

13

14 (THE FOLLOWING PROCEEDINGS
15 WERE HELD IN OPEN COURT IN
16 THE PRESENCE OF THE JURY.)

17

18 THE COURT: OUR JURY PANEL IS WITH US.
19 COUNSEL ARE PRESENT AS WELL.
20 SIR, YOU UNDERSTAND YOU ARE STILL
21 UNDER OATH.

22 THE WITNESS: YES.

23 THE COURT: MR. PIUZE.

24 MR. PIUZE: THANK YOU, YOUR HONOR.

25

26

27 MARVIN GOLDBERG, PH.D.,
28 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN

2534

1 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
2 AND TESTIFIED FURTHER AS FOLLOWS:

3

4 DIRECT EXAMINATION (RESUMED)

5

6 BY MR. PIUZE:

7 Q. ALL RIGHT. I WILL LET YOU POUR.

8 AS SOON AS YOU ARE DONE, I AM GOING TO ASK THE
9 QUESTION.

10 DOES ALL OF THE MONEY THAT IS SPENT

11 ON ADVERTISING JUST GO AS A FIGHT BETWEEN BRANDS OR

12 DOES IT GO TO ACTUALLY GET SOME PEOPLE TO SMOKE?

13 IS YOUR ANSWER IT GOES TO GET SOME

14 PEOPLE TO SMOKE?

15 A. YES, IT DOES EXPAND THE MARKET AND

16 I WAS ABOUT TO GIVE YOU A COUPLE EXAMPLES.

17 Q. SHOOT.

18 A. ONE OF A FEW EXAMPLES IS AN

19 INSTANCE BACK IN THE '90'S WHEN ADVERTISING FOR JOE

20 CAMEL SERVED TO INCREASE THE MARKET AMONG YOUNG

21 PEOPLE FOR JOE CAMEL BUT IT ALSO EXPANDED THE

22 ENTIRE MARKET AMONG YOUNG PEOPLE.

23 IT WASN'T JUST JOE CAMEL THAT WENT

24 UP AND SOMETHING ELSE WENT DOWN. ALL OF CIGARETTE

25 CONSUMPTION AMONG YOUNG PEOPLE WENT UP. THIS IS A

26 UNIVERSITY OF MICHIGAN NATIONAL STUDY MONITORING

27 THE FUTURE, 20,000 KIDS, MONITORED EVERY YEAR AND

28 THIS IS WHAT THEY DOCUMENTED.

2535

1 WHEN, IN THE, I THINK IT WAS BACK

2 IN THE '70'S, WHEN THERE WAS A LOT OF ADVERTISING

3 FOR VIRGINIA SLIMS FOR YOUNG WOMEN, THE MARKET, THE

4 CONSUMPTION OF CIGARETTES, VIRGINIA SLIM

5 CIGARETTES, WENT UP BUT SO DID ALL OF THE

6 CONSUMPTION FOR ALL YOUNG WOMEN.

7 AND INTERESTINGLY, NOT OLDER WOMEN,

8 JUST THE TARGETING WAS PRETTY GOOD. THEY SOLD MORE

9 VIRGINIA SLIM CIGARETTES BUT IT IS AS IF THE TIDE

10 ROSE FOR ALL OF THOSE CIGARETTES TARGETING YOUNG

11 WOMEN. IT DIDN'T COME AT THE EXPENSE OF THE

12 OTHERS.

13 WHEN LIGHT CIGARETTES, AS A

14 CATEGORY, AS IT WERE, BUT ALL OF THE BRANDS OF

15 LIGHT CIGARETTES WERE FIRST ADVERTISED, CERTAINLY

16 THEY EXPANDED VERY WELL THE MARKET FOR LIGHT

17 CIGARETTES. BUT IT DID NOT COME AT THE EXPENSE OF

18 CIGARETTES IN GENERAL. THAT MARKET -- OR AT LEAST

19 NOT TOTALLY -- THAT MARKET WENT UP AS WELL.

20 SO IT'S NOT A TUG OF WAR BETWEEN

21 THESE. THERE ARE OTHER APPROACHES TO GETTING THE

22 SAME ANSWER. THAT'S ONE SET OF RESPONSES TO YOUR

23 QUESTION. I DON'T KNOW IF YOU WANT ME TO GO ON OR

24 NOT.

25 Q. OKAY. WELL, NOT RIGHT NOW. AND I

26 WILL LET YOU TAKE A DRINK OF WATER.

27 NOW, GIVE US ANOTHER SET OF

28 RESPONSES TO THE QUESTION.

2536

1 A. WELL, THERE'S AN APPROACH THAT IS

2 STATISTICALLY CALLED ECONOMETRICS. IT'S PRETTY

3 ESOTERIC. IT TRIES TO TAKE THE WHOLE COUNTRY, AS

4 IT WERE, AND LOOK, OVER TIME, AT HOW MUCH

5 ADVERTISING IS DONE, HOW MUCH -- WHAT'S THE LEVEL

6 OF CONSUMPTION OF CIGARETTES AT VARIOUS POINTS IN

7 TIME AND ALSO TAKE ACCOUNT OF OTHER FACTORS, PRICE

8 OF CIGARETTES, THE AGE OF THE PEOPLE INVOLVED, JUST
9 A WHOLE ARRAY OF THINGS AND TRIES TO STATISTICALLY
10 PARTIAL OUT, SEPARATE AWAY THOSE OTHER FACTORS.
11 OVER TIME, SOME OF THOSE STUDIES, A
12 VERY FEW, HAVE INDICATED THAT LOOKING AT THE LEVEL
13 OF ADVERTISING THAT IS DONE AND THE CONSUMPTION, AS
14 YOU TRACK IT ACROSS MANY, MANY YEARS, OCCASIONALLY
15 THERE'S A STUDY THAT SAYS, NO, THERE ISN'T ANY
16 RELATIONSHIP.
17 BUT THERE ARE FAR MORE THAT DO SAY,
18 YES, THERE IS A RELATIONSHIP AND THERE ARE SEVERAL
19 RESEARCHERS THAT DECIDED THEY WOULD TAKE ALL OF
20 THESE STUDIES, MOST OF THEM, ABOUT 50, AND THEY
21 WOULD PUT THEM ALL TOGETHER. AND IT'S WHAT'S
22 CALLED A META ANALYSIS.
23 AND THEY DO AN ANALYSIS OF ALL OF
24 THESE STUDIES TOGETHER AND SAY, OKAY, IF YOU
25 COMBINE ALL THESE, IF YOU SAY, NO, THERE ISN'T ANY
26 RELATIONSHIP AND A LOT OF THEM SAY THERE IS, IF YOU
27 PUT THEM ALL TOGETHER, WHAT DOES THAT SAY.
28 AND THEIR CONCLUSION WAS, THAT,
2537

1 INDEED, OVER TIME, FACTORING AWAY, TUCKING AWAY,
2 SEPARATING OUT ALL THOSE OTHER THINGS, LIKE PRICE
3 AND AGE OR WHATEVER, THERE IS, INDEED, A
4 RELATIONSHIP BETWEEN THE AMOUNT OF ADVERTISING
5 THAT'S DONE, ACROSS THE COUNTRY, AND THE FACT THAT
6 ABOUT HALF OF THESE WERE DONE IN THE UNITED STATES
7 AND HALF IN OTHER COUNTRIES.
8 THERE'S A RELATIONSHIP BETWEEN THE
9 AMOUNT OF ADVERTISING THAT'S DONE AND THE LEVEL OF
10 CONSUMPTION. THERE IS, INDEED, A RELATIONSHIP.
11 Q. OKAY.
12 NOW, YOU SAID THAT YOU HAD READ
13 PARTS OF MR. BOEKEN'S DEPOSITION. REMEMBER THAT?
14 A. YES.
15 Q. I WANT TO GIVE YOU A LITTLE
16 HYPOTHETICAL QUESTION HERE. I'D LIKE YOU TO JUST
17 ASSUME THAT MR. BOEKEN SAID, WELL, THE REASON THAT
18 I STARTED SMOKING WAS BECAUSE ADULTS DID IT.
19 THE REASON I STARTED SMOKING IS
20 BECAUSE IT WAS COOL.
21 THE REASON I STARTED SMOKING IS
22 BECAUSE IT'S THE THING TO DO.
23 THE REASON I STARTED SMOKING WAS
24 IT'S SOPHISTICATED.
25 I'D LIKE YOU TO ASSUME THOSE
26 THINGS. OKAY?
27 A. UH-HUH, YES.
28 Q. THERE MAY HAVE BEEN OTHER REASONS
2538

1 BUT THOSE ARE THE ONES THAT I REMEMBER RIGHT NOW.
2 HE DIDN'T SAY ADVERTISING.
3 MR. BOEKEN DID NOT SAY THE REASON HE STARTED
4 SMOKING WAS ADVERTISING.
5 SO HAVING POINTED THAT OUT TO YOU,
6 HERE'S THE QUESTION: ADVERTISING HAD NOTHING TO DO
7 WITH THE FACT THAT MR. BOEKEN STARTED SMOKING WHEN
8 HE WAS 13 YEARS OLD; RIGHT?
9 A. WRONG.
10 Q. WHY WRONG?
11 A. FOR MANY YEARS -- FIRST OF ALL, I
12 DON'T KNOW MR. BOEKEN'S PARENTS AND -- BUT I DO

13 KNOW THEY SMOKED.
14 MY HUNCH IS THEY WEREN'T ALL THAT
15 SOPHISTICATED BUT I CAN'T TELL YOU THAT FOR SURE.
16 BUT WHAT I PROBABLY CAN TELL YOU
17 WITH GREATER CERTAINTY IS THAT WHEN MR. BOEKEN WAS
18 14, HE DIDN'T LOOK TO HIS PARENTS AND SAY, I WANT
19 TO BE JUST LIKE THEM. 14-YEAR-OLDS JUST DON'T DO
20 THAT.
21 SO HIS PARENTS' BEHAVIOR, I DON'T
22 THINK -- USUALLY WE ARE GUIDED AWAY FROM OUR
23 PARENTS' BEHAVIOR. THEIR BEHAVIORS AT THAT AGE, I
24 WANT TO GO OFF MY OWN WAY, I WANT TO SHOW THEM I AM
25 NOT LIKE THEM, THEY DON'T KNOW ANYTHING ANYWAY AND
26 I AM GOING TO SHOW THEM.
27 Q. THAT IS HOW 14-YEAR-OLD KIDS THINK?
28 A. I HAVE A 20-YEAR-OLD AND A
2539

1 24-YEAR-OLD AND THAT'S AS CLOSE AS I CAN COME
2 RECENTLY. AND THE ANSWER IS YES.
3 MAYBE THERE'S A MINORITY THAT DON'T
4 BUT I HAVEN'T FOUND THEM. 14 SEEMS TO BE IT.
5 SO, LET'S THINK OF ANOTHER THING.
6 THE CIGARETTE, YOU KNOW, THE STICK
7 WITH THE TOBACCO IN IT, DID IT FALL FROM THE SKY
8 WITH AN IMAGE OF SOPHISTICATED?
9 NO, I DON'T THINK SO.
10 WHEN PEOPLE TRY THEIR FIRST
11 CIGARETTE, COUGH AND SPIT, TYPICALLY, AND I THINK
12 MR. BOEKEN SAID THAT HE THOUGHT THAT THAT MIGHT
13 HAVE HAPPENED, DOES THAT AUTOMATICALLY LEAD THEM TO
14 THINK SOPHISTICATED?
15 NO, I THINK NOT.
16 SO THE FIRST EXPERIENCE DOESN'T DO
17 IT. IT SURE DOESN'T FALL FROM THE SKY AS
18 SOPHISTICATED. YOUR PARENTS AREN'T LIKELY TO GUIDE
19 YOU THAT WAY.
20 NOW, WHO IS?
21 ARE YOUR FRIENDS MORE SOPHISTICATED
22 THAN YOU?
23 MAYBE, MAYBE NOT.
24 WHERE DOES THIS IDEA OF
25 SOPHISTICATION COME FROM?
26 IT COMES, IN LARGE MEASURE, FROM
27 THE ADVERTISING.
28 THE IMAGES THAT ARE HELD UP ALL
2540

1 AROUND US, AND IN A VERY SUBTLE, SOPHISTICATED WAY,
2 THE ADVERTISING IS SOPHISTICATED.
3 SO WHEN I THINK OF HOW MR. BOEKEN
4 PROBABLY STARTED TO SMOKE, I THINK OF ALL OF THOSE
5 IMAGES AND I THINK, MY GOODNESS, IF THOSE IMAGES
6 WEREN'T THERE, IMAGINE THAT THERE WAS SOME CONTRARY
7 IMAGES. IMAGINE IF THE IMAGES THAT WE ARE NOW
8 STARTING TO SEE, IMAGINE IF THE IMAGE WAS OF THE
9 MARLBORO MAN DYING OF LUNG CANCER ON AN OXYGEN
10 MASK, AND THEY HAVE THAT IN ONE OF THE COUNTER-ADS.
11 IMAGINE IF BACK THEN EVERYWHERE YOU LOOKED YOU SAW
12 THAT. THERE WOULD BE FAR FEWER SMOKERS, I
13 GUARANTEE. THERE WOULDN'T BE NONE, BUT THERE WOULD
14 BE FAR FEWER.
15 OVER AND OVER AGAIN, YOU SAW THESE
16 IMAGES OF UNHEALTHINESS, UNSOPHISTICATION, THINGS
17 THAT PEOPLE ARE SHOCKED BY, THAT ARE TRUE NOW, IF

18 THAT WAS WHAT WAS IN OUR ENVIRONMENTS AT THE TIME,
19 WE WOULDN'T BE SITTING HERE NOW.
20 Q. ALL RIGHT. WELL, THANK YOU.
21 I THINK YOU WENT A LITTLE BIT
22 BEYOND WHERE I WANTED TO BE AND I WAS GOING TO GET
23 THERE EVENTUALLY. BUT IS A MARK OF GOOD
24 ADVERTISING SOMETIMES THAT PEOPLE DON'T REMEMBER
25 THE ADS THAT GOT THEM TO DO WHAT THEY DO?
26 A. SOMETIMES THE VERY BEST
27 ADVERTISING.
28 THERE'S REALLY, IF I CAN STEP BACK
2541
1 FOR A MINUTE, THERE'S TWO BROAD KINDS OF
2 ADVERTISING. THERE'S THE KINDS OF ADVERTISING THAT
3 IS INTENTIONALLY INFORMATIONAL, IT'S THE KINDS OF
4 ADVERTISING THAT ONE SHOULD GET YOU TO THINK.
5 NOW, TYPICALLY, IT MIGHT BE FOR
6 QUITE AN EXPENSIVE PRODUCT THAT TAKES A LOT OF
7 DELIBERATIVE EFFORT, YOU ARE ABOUT TO BUY A HOUSE,
8 YOU ARE ABOUT TO BUY A CAR AND WE WANT TO GIVE YOU
9 THE 15 REASONS WE THINK YOU SHOULD BUY OUR BRAND.
10 WE WANT TO GET YOU TO THINK IT THROUGH.
11 AND THEN THERE'S A BROAD SECOND SET
12 OF TYPE OF ADVERTISING, THAT IS, IMAGE-ORIENTED
13 ADVERTISING THAT PRESENTS AN IMAGE THROUGH
14 PICTURES. MIGHT BE ON T.V., THROUGH MUSIC AND
15 THERE WE REALLY DON'T WANT TO GET PEOPLE THINKING A
16 LOT. WE WANT TO REPEAT THE MESSAGE OVER AND OVER
17 AGAIN, SO IT BECOMES QUITE FAMILIAR, BUT HAVE IT AS
18 BACKGROUND SO THAT ASSOCIATIONS OCCUR WITHOUT THEIR
19 THINKING THEM THROUGH.
20 IF SOMEBODY ON A SUBWAY IN NEW YORK
21 CITY THOUGHT ABOUT WHETHER THEY WANTED THE REALITY
22 OF BEING A COWBOY, WELL, OF COURSE, THEY ARE GOING
23 TO SAY, I DON'T COME CLOSE TO THAT WORLD.
24 BUT IT IS IN THE BACKGROUND. WE
25 ARE THINKING OF MANY, MANY OTHER THINGS THAT ARE
26 ISSUES AND PROBLEMS IN OUR LIFE AND IT IS IN THE
27 BACKGROUND. WE CATCH IT JUST AT A GLIMPSE AND
28 CATCHING IT AS A GLIMPSE OVER AND OVER AND OVER
2542
1 AGAIN, YOU GET WHAT IS REALLY ASSOCIATIVE LEARNING.
2 A CIGARETTE, AGAIN, NEVER FELL OUT OF THE SKY
3 LOOKING SOPHISTICATED. BUT IF YOU PLACE IT IN THE
4 CONTEXT OF SOPHISTICATED PEOPLE, SOPHISTICATED
5 PLACES, VIRILE PEOPLE, VIRILE PLACES, PRISTINE AND
6 CLEAN PLACES, SUCCESSFUL PEOPLE, YOU KNOW, WITH ALL
7 THOSE IMAGES REPEATED OVER AND OVER AND OVER AGAIN,
8 THERE IS A KIND OF ASSOCIATION. IT HAPPENS TO US
9 WITHOUT THINKING. AND THE PRODUCT TAKES ON THE
10 IMAGE OF THOSE THINGS AROUND IT.
11 IT IS THE INTENT OF THE ADVERTISER,
12 VERY CLEARLY THE STRATEGY THAT'S INTENDED WITH THAT
13 APPROACH.
14 AND, IN FACT, WHEN I TALK ABOUT IT
15 AND TRY TO CONVEY THE IDEA TO YOUNGSTERS, WE CALL
16 IT RUB OFF. IT JUST RUBS OFF. THE IMAGE FROM THE
17 ENVIRONMENT AROUND IT, BE IT PEOPLE OR PLACES OR
18 MUSIC ON TELEVISION, THOSE KINDS OF PERIPHERAL
19 ELEMENTS, AND THAT'S WHAT STRESSES, LOW
20 INVOLVEMENT, LOW CONSCIOUSNESS APPROACH, REPEATED
21 OFTEN. IT BECOMES VERY FAMILIAR. IT BECOMES VERY
22 FAMILIAR, VERY FRIENDLY, AS A FUNCTION OF BEING

23 FAMILIAR.
24 IT'S NOT THREATENING, IT'S A PART
25 OF MY ENVIRONMENT, AS MUCH A PART OF THE
26 ENVIRONMENT AS OTHER ASPECTS OF OUR CULTURE THAT WE
27 TAKE FOR GRANTED. IT'S OBVIOUSLY WHEN YOU STEP
28 OUTSIDE THAT CULTURE, YOU SAY, I DIDN'T RECOGNIZE
2543

1 THAT AND THERE ARE ALL KINDS OF EXAMPLES.
2 WE DON'T RECOGNIZE HOW POWERFUL
3 THAT SUBTLE INFLUENCE IS BECAUSE IT ENVELOPES US
4 WITHOUT MAKING US THINK ABOUT IT. IT DOESN'T WANT
5 US TO THINK ABOUT IT.

6 Q. OKAY, THANK YOU.

7 SO THE QUESTION IS, MR. BOEKEN
8 NEVER MENTIONED ADVERTISING AS A REASON HE STARTED
9 SMOKING. AND MY CHALLENGE TO YOU WAS THAT MEANS
10 ADVERTISING HAD NOTHING TO DO WITH HIS SMOKING.
11 AND YOU ARE SAYING, WRONG. AND THAT WAS MY
12 REASONING.

13 A. WRONG. AND EVEN SOME OF THESE
14 STATEMENTS, WHEN HE SAYS, YOU KNOW, ADVERTISING IS
15 EVERYWHERE, PEOPLE WERE SMOKING EVERYWHERE, ONE OF
16 THE OUTCOMES OF THIS HEAVY LEVEL OF ADVERTISING IS
17 THAT IT PERSUADES PEOPLE THAT THE NORM IS WHAT THEY
18 SEE. IF EVERYONE IS SMOKING IN THESE ADS, IF ADS
19 ARE EVERYWHERE, IF THESE COMPANIES ARE PAYING FOR
20 ALL THESE ADS, I BET A LOT OF PEOPLE ARE SMOKING.
21 WHAT HAPPENS, WITH KIDS IN
22 PARTICULAR, IS THAT THOSE KIDS WHO SEE A LOT --
23 THERE'S A STUDY THAT INDICATES THAT THOSE KIDS THAT
24 SEE MORE ADVERTISING, OVER-ESTIMATED HOW MUCH
25 PEOPLE SMOKE AND THERE'S A NUMBER OF STUDIES THAT
26 SHOW WHEN KIDS THINK THAT MORE PEOPLE SMOKE THAN
27 REALLY IS THE CASE, THAT'S ONE OF THE HIGHEST RISK
28 FACTORS THERE IS.

2544

1 THOSE KIDS WILL GO ON TO SMOKE.
2 SO THE PREVALENCE OF ADVERTISING,
3 AND IN MR. BOEKEN'S CASE, WHETHER IT WAS PREVALENT
4 OR NOT, HE BELIEVED IT WAS, FROM WHAT I READ, IT'S
5 ALL AROUND. EVERYONE IS SMOKING.
6 IT'S THE THING TO DO.

7 MY HUNCH IS THAT HIS PERCEPTION WAS
8 GUIDED AS MUCH BY THE ADVERTISING, HEAVY
9 ADVERTISING, AS THE NUMBER OF PEOPLE SMOKING, THAT
10 SEEMS TO BE THE CASE IN THE STUDIES THAT I AM
11 REFERRING TO.

12 Q. THANK YOU.

13 LET'S TALK NOW, I AM GOING TO -- DO
14 YOU REMEMBER 1957?

15 A. YEP.

16 Q. I AM GOING TO BRING YOU BACK TO
17 1957 AND I AM GOING TO DRAG ALL OF US WITH YOU WITH
18 SOME MARLBORO ADS IN A LITTLE BIT.

19 FIRST I WANT TO TALK ABOUT
20 ADVERTISING A LITTLE MORE GENERALLY.

21 CAN YOU GIVE US -- I MEAN,
22 OBVIOUSLY, THERE'S ADVERTISING ALL OVER TELEVISION,
23 BUT CAN YOU GIVE US SOME GENERAL CATEGORIES OF
24 ADVERTISING SO THAT I CAN, AFTER YOU DO THAT, TALK
25 ABOUT SOME OF THE MORE SUBTLE ONES WITH YOU,
26 PLEASE.

27 A. I AM UNSURE WHAT YOU ARE REFERRING

28 TO. GENERAL CATEGORIES OF ADVERTISING?

2545

1 Q. YEAH, LIKE PRINT.

2 A. YEAH, THE MEDIUM.

3 Q. THE MEDIA; RIGHT?

4 A. THERE ARE VARIOUS DIFFERENT MEDIA,
5 MEDIUM.

6 CERTAINLY, RADIO, T.V., MAGAZINES,
7 NEWSPAPERS, BILLBOARDS, THOSE ARE MAJOR ONES.

8 Q. WHAT ABOUT --

9 A. PROMOTIONS AS WELL THROUGH RACE CAR
10 DRIVING AND SPORTS AS WELL.

11 Q. FINE.

12 WHAT ABOUT INSIDE OF MARKETS, IS
13 THERE A CATEGORY FOR THAT ADVERTISING INSIDE OF
14 MARKETS?

15 A. CERTAINLY. THE IN-STORE SIGNAGE
16 HAS BECOME A BIGGER AND BIGGER FACTOR AND IS A
17 FACTOR NOW, BE IT THE STORE HOURS ON THE OUTSIDE OF
18 THE DOOR OR THE MAT WHERE YOU PUT YOUR COINS AND
19 SIGNAGE EVERYWHERE THAT ADVERTISED THE PRODUCTS
20 THEMSELVES.

21 Q. WHAT ABOUT LITTLE TRINKETS INSIDE
22 OF STORES LIKE WHERE THEY PUT YOUR CHANGE OR A
23 CLOCK WITH A LOGO ON IT, STUFF LIKE THAT?

24 A. THOSE PROMOTIONS HAVE BEEN, IN
25 FACT, QUITE EFFECTIVE IN -- WELL, IT'S A PROMINENT
26 CATEGORY, MORE AND MORE PROMINENT AND GOES BACK A
27 WAYS.

28 Q. WHAT ABOUT IN PUBLIC TRANSPORTATION

2546

1 AREAS, THAT DOESN'T SEEM TO FIT INTO BILLBOARDS OR
2 THINGS. WHAT WOULD YOU CALL THAT?

3 A. TRANSIT ADVERTISING, EITHER IN
4 TRANSIT OR A SIDE BOARD ON THE BUSES OR WHATEVER.

5 Q. WHAT ABOUT IN BUSES SHELTERS AND
6 BUS STOPS?

7 A. THAT AS WELL, YES, POSTURES.
8 MIGHT BE IN MALLS AS WELL, THOSE
9 KINDS OF ADS.

10 Q. HOW MANY TIMES, DO YOU HAPPEN TO
11 KNOW OR HAVE AN OPINION HOW MANY DIFFERENT MESSAGES
12 WE GET, FORGET TOBACCO NOW JUST FOR OPENERS. DO WE
13 GET HUNDREDS OR THOUSANDS OR WHAT ADVERTISING
14 MESSAGES A DAY, JUST BY KEEPING OUR EYES OPEN AND
15 BEING ALIVE IN SOCIETY?

16 A. I THINK, INADVERTENTLY CLOSE TO A
17 THOUSAND. YOU CAN'T PROCESS THEM ALL. AND THAT'S
18 THE POINT, YOU WOULD NOT BE ABLE TO FUNCTION IF YOU
19 PROCESSED ALL OF THEM.

20 AND SO WE GET GLIMPSES, JUST
21 GLIMPSES, AND THAT'S WHY THE REPETITION AND THE
22 PERVASIVENESS IS SO IMPORTANT. AND THERE'S EXAMPLE
23 AFTER EXAMPLE OF PRODUCTS THAT DON'T ADVERTISE
24 SUFFICIENTLY TO DENT THE CONSCIOUSNESS OF THE
25 CONSUMER AND FALL AWAY.

26 Q. I'D LIKE TO START OFF, I AM READY
27 TO TALK ABOUT SOME MARLBORO ADS. ARE YOU?

28 A. UH-HUH.

2547

1 Q. I'D LIKE -- HERE'S MY GENERAL PLAN.

2 I AM GOING TO TAKE SOME ADS AND PUT THEM UP ON A
3 TIME LINE GOING ACROSS THAT DEMONSTRATIVE EXHIBIT

4 WE GOT UP THERE. BUT I AM ALSO GOING TO SHOW THEM
5 EITHER ON THE ELMO OR AS BLOW-UPS ALSO.
6 OKAY?
7 A. YES.
8 Q. JUST GIVE ME A SECOND HERE.
9 HERE WE GO.
10 MR. PIUZE: YOUR HONOR, I WAS JUST
11 SCRATCHING MY HEAD. I NEED A LITTLE GUIDANCE FROM
12 THE COURT. I JUST FORGET WHERE MY LAST NUMBER IS.
13 CAN I INVENT --
14 THE COURT: MR. CLERK, WHAT'S THE LAST
15 NUMBER YOU HAVE, NEXT IN ORDER.
16 THE CLERK: NEXT IN ORDER --
17 MR. PIUZE: YOU KNOW WHAT, YOUR HONOR, I
18 AM SORRY. I CREATED A PROBLEM FOR MYSELF, I JUST
19 SOLVED IT. I APOLOGIZE.
20 THIS IS 8002.43.
21
22 * (EXHIBIT 8002.43, BLOWUP OF
23 MARLBORO AD, MARKED FOR I.D.)
24
25 Q BY MR. PIUZE: SEEN THAT BEFORE?
26 A. JUST TODAY, YES.
27 Q. MARLBORO AD?
28 A. IT'S A FASCINATING MARLBORO AD
2548
1 BECAUSE IT COMES FROM WAY BACK.
2 Q. COWBOYS?
3 A. NO COWBOYS.
4 Q. GUYS?
5 A. NO GUYS.
6 Q. MACHO?
7 A. NOT VERY MACHO.
8 Q. THIS AD FROM WAY BACK ADVERTISES
9 MARLBORO CIGARETTES, IVORY TIPS, PROTECTS THE LIPS
10 AND IT SHOWS A LADY; RIGHT?
11 A. IT SHOWS A LADY AND GOES BACK TO
12 WHAT I WAS SAYING THAT THESE CIGARETTES DID NOT
13 FALL FROM THE SKY AS MACHO, IN THIS CASE. IN FACT,
14 THEIR FIRST INCARNATION WAS QUITE DIFFERENT. IT
15 WAS A FEMALE IMAGE TO CIGARETTES. AND IT'S
16 TRANSFORMATION IS QUITE REMARKABLE.
17 Q. HERE'S AN AD FROM 1955 AND I WANT
18 TO CHOOSE FOR A NUMBER 8002.75.
19
20 * (EXHIBIT 8002.75, BLOWUP OF
21 MARLBORO AD, MARKED FOR I.D.)
22
23 MR. LEITER: OBJECTION. CAN WE HAVE A
24 FOUNDATION AS TO THE TIMING.
25 THE COURT: FAIR ENOUGH.
26 TIMING.
27 MR. PIUZE: I THINK THIS -- I HAVEN'T
28 SHOWN THIS TO THE JURY AND I THINK THIS WITNESS CAN
2549
1 TESTIFY AS TO THE TIMING.
2 WOULD YOU LIKE ME TO SAY THE YEAR?
3 I WOULD BE HAPPY TO.
4 MR. LEITER: I JUST WANT TO ESTABLISH THE
5 FOUNDATION.
6 Q BY MR. PIUZE: DID YOU PROCURE
7 THIS AD HERE?
8 A. I FOUND IT ON THE WEB SITE, YES.

9 Q. FOUNDATION MEANS YOU ARE GOING TO
10 TELL US HOW YOU KNOW THESE THINGS.
11 SO TELL US WHAT THE WEB SITE IS,
12 HOW IT IS POSTED THERE, HOW YOU GOT THERE SO THAT
13 WE CAN TALK ABOUT THESE INDIVIDUAL PICTURES. OKAY?
14 A. YES.
15 Q. PLEASE.
16 A. THE ROSWELL PARK CANCER HOSPITAL
17 ASSOCIATION, THERE'S AN INSTITUTION IN BUFFALO AND
18 MIKE CUMMINGS IS A COLLEAGUE THAT I KNOW THERE.
19 AND HE INFORMED ME THAT THERE'S SOMETHING LIKE,
20 WELL, ALL OF RICK POLLAY'S, I THINK, SOMETHING LIKE
21 8,000 ADS ARE NOW UP ON THAT WEB SITE.
22 AND SO I WENT TO THE WEB SITE AND
23 SPECIFIED MARLBORO, GOING BACK TO, I THINK, 1970 --
24 1950 OR SO, AND ON THROUGH 1975 OR '80 AND
25 DOWN-LOADED A NUMBER OF ADS.
26 Q. SO RICK POLLAY IS THE PERSON THAT
27 WE TALKED ABOUT A LITTLE BIT BEFORE. IS HE THE MAN
28 WHO IS A PROFESSOR AT THE UNIVERSITY OF BRITISH
2550
1 COLUMBIA?
2 A. YES. AND I BELIEVE ONE OF HIS
3 TITLES IS HE IS ARCHIVIST AND HAS SPENT A GOOD DEAL
4 OF TIME COLLECTING A THOROUGH SET OF ADS, CIGARETTE
5 ADS.
6 Q. DID YOU GET THE YEARS FOR THESE ADS
7 FROM HIS ARCHIVE ON THE WEB?
8 A. YES. WHEN THEY PUT THEM UP ON THE
9 WEB, THEY CAREFULLY ANNOTATED THEM SO YOU CAN -- BY
10 YEAR AND BY BRAND. SO THAT'S HOW I SPECIFIED
11 GETTING THIS SET.
12 Q. SO LET ME SHOW YOU THIS ONE --
13 MR. LEITER: BEFORE YOU SHOW THAT, I AM
14 GOING TO OBJECT THAT IT IS SUFFICIENT.
15 THE COURT: SUFFICIENT FOR ADMISSIBILITY
16 PURPOSES ONLY. THE JURY WILL DETERMINE THE TRUTH
17 OR THE FALSITY OF THE ASSERTION.
18 THANK YOU, COUNSEL.
19 MR. LEITER: THANK YOU, YOUR HONOR.
20 Q BY MR. PIUZE: BEFORE I SHOW IT, I
21 JUST WANT TO STATE ANOTHER MINUTE OR SO.
22 YOU MENTIONED THAT YOU HAVE SPOKEN
23 EVEN TO DR. POLLAY A COUPLE TIMES SINCE I ASKED YOU
24 TO CONSULT WITH ME ON THIS CASE; TRUE?
25 A. YES.
26 Q. BEFORE I EVER ASKED YOU TO CONSULT
27 WITH ME IN THIS CASE, DID YOU KNOW DR. POLLAY?
28 A. YES. RICK IS BOTH A FRIEND AND A
2551
1 COLLEAGUE. WE GO BACK, GEE, I WAS IN HIS HOUSE 30
2 YEARS AGO OR 25 YEARS AGO. WE WENT -- MY
3 DAUGHTER'S IN SEATTLE AND AT THANKSGIVING WE
4 VISITED HER AND DROVE UP TO VANCOUVER AND HAD
5 DINNER WITH RICK AND HIS WIFE AND ANOTHER COUPLE.
6 Q. WE DON'T NEED TO KNOW WHAT YOU HAD
7 WITH THE TURKEY.
8 A. WE ARE FRIENDS AS WELL AS
9 COLLEAGUES.
10 Q. OVER THE COURSE OF THE YEARS, HAVE
11 YOU BEEN AWARE THAT DR. POLLAY HAS A KEEN INTEREST
12 IN TOBACCO ADVERTISING GOING BACK TO HOW FAR YOU GO
13 BACK?

14 A. OH, YES, HIS PUBLICATIONS, HE'S
15 PUBLISHED WIDELY. I HAVE READ THEM, A NUMBER OF
16 THEM. HE'S MADE PRESENTATIONS. I HAVE BEEN AT ONE
17 OR TWO AND WE HAVE TALKED AT CONFERENCES AND
18 OCCASIONALLY -- MY VERY CLOSEST FRIEND WAS AT THE
19 UNIVERSITY OF BRITISH COLUMBIA SO I HAD OCCASION TO
20 VISIT THERE IN ANY CASE AND WE WOULD CHAT.

21 Q. AND DID DR. POLLAY'S WORK ON
22 TOBACCO ADVERTISING FIND ITS WAY INTO SOME OF THE
23 SURGEON GENERAL'S WORKS?

24 A. YES. I BELIEVE HE HAS CONTRIBUTED
25 SIGNIFICANTLY TO THE SURGEON GENERAL'S WORK WITH
26 REGARD TO YOUTH, AND I DON'T KNOW IF IT IS MORE
27 BROAD THAN THAT, BUT CERTAINLY WITH REGARD TO
28 YOUTH.

2552

1 Q. THANK YOU.

2 SO HERE WE GO. THIS IS 8002.75 AND
3 THE YEAR, PLEASE.

4 A. I THINK IT WAS -- THAT WAS 1955 AND
5 THAT'S WHERE IT INDICATED ON THE WEB SITE. I JUST
6 RECORDED THAT.

7 Q. OBVIOUSLY, IT'S NOT A LADY AND I AM
8 NOT GOING TO READ WHAT IT SAYS. THE JURY CAN READ
9 WHAT IT SAYS. BUT I'D LIKE YOUR COMMENTS NOW.
10 1955, RICHARD BOEKEN IS 11 YEARS OLD, ACCORDING TO
11 THE TESTIMONY WE HAVE HAD IN THIS CASE, HE HAD
12 PICKED UP A BUTT OUT OF AN ASHTRAY THE YEAR BEFORE
13 WHEN HE WAS TEN YEARS OLD, SORT OF AS AN
14 EXPERIMENT, AND 1955 WOULD HAVE BEEN TWO YEARS
15 BEFORE HE STARTED SMOKING FOR REAL.

16 SO NOW HAVING SAID THAT TO YOU, AND
17 I'D LIKE YOU TO ASSUME ALL THAT TO BE TRUE, I'D
18 LIKE YOUR OPINIONS ON WHAT THIS AD HERE SAYS TO A
19 YOUNG MAN IN 1955.

20 MR. LEITER: OBJECTION, CALLS FOR
21 SPECULATION.

22 THE COURT: ALL RIGHT. FROM YOUR
23 PERSPECTIVE, HAVING STUDIED MARKETING, NOT
24 SPECIFICALLY TO RICHARD BOEKEN HIMSELF. OKAY, IN
25 GENERAL.

26 THE WITNESS: WELL, FIRST OF ALL, I
27 CONTRAST IN GENERAL WITH THE PREVIOUS ONE BECAUSE
28 THERE WAS CLEARLY A REPOSITIONING OF THE BRAND.

2553

1 AND THIS WAS FAIRLY CLEAR FROM PHILIP MORRIS
2 DOCUMENTS AS WELL, THAT THERE WAS AN INTENTION TO
3 REPOSITION THIS BRAND, TO MAKE IT MASCULINE, TO
4 MAKE IT MACHO.

5 AND THE MODELS, AND THIS IS AN
6 EXCELLENT EXAMPLE, THE MODELS THAT THEY SOUGHT, AND
7 THIS MODEL REPRESENTS A VERY TOUGH, MASCULINE MODEL
8 THAT CERTAINLY WOULD APPEAL TO YOUNG BOYS.

9 Q. WHEN YOU JUST ALLUDED TO PHILIP
10 MORRIS DOCUMENTS AS BACKING UP OR VERIFYING WHAT
11 YOU JUST TOLD THE JURY, WHAT PHILIP MORRIS
12 DOCUMENTS ARE YOU TALKING ABOUT?

13 A. WELL, FIRST, THESE ARE SUMMARIZED
14 IN THE SURGEON GENERAL'S REPORT, I BELIEVE, AND
15 SURGEON GENERAL REPORT OF 1994, THE ONE THAT
16 FOCUSES ON YOUTH. AND THERE ARE QUOTES OUT OF THE
17 SUNDAY "NEW YORK TIMES" THAT TALKS ABOUT WE WANT
18 THE HEROIC MASCULINE FIGURE.

19 MR. LEITER: OBJECTION, HEARSAY.
20 THE COURT: IT IS HEARSAY, LADIES AND
21 GENTLEMEN. DISREGARD THAT.
22 Q BY MR. PIUZE: LET ME GO ABOUT
23 THAT DIFFERENTLY.
24 ARE YOU QUOTING SOMEONE FROM PHILIP
25 MORRIS?
26 A. YES, A MARKETING MANAGER.
27 THE COURT: YOU MEAN YOU ARE TALKING
28 ABOUT THE "NEW YORK TIMES" ARTICLE?
2554
1 MR. PIUZE: YES.
2 THE COURT: OKAY, BUT IT'S HEARSAY ON
3 HEARSAY. LADIES AND GENTLEMEN, YOU WILL JUST
4 DISREGARD THAT.
5 MR. PIUZE: OKAY, SORRY.
6 THE COURT: PROCEED.
7 Q BY MR. PIUZE: ONE WAY OR THE
8 OTHER, TAKE A LOOK AT THE BACK OF THE GUY'S HAND.
9 DO YOU SEE THAT?
10 A. THERE IS A TATTOO, A VERY EVIDENT
11 TATTOO TO MAKE HIM MORE MASCULINE, MORE TOUGH.
12 NONE OF THIS IS BY ACCIDENT. IT
13 WAS ALL VERY CAREFULLY THOUGHT OUT.
14 MR. LEITER: OBJECTION.
15 THE COURT: IN GENERAL TERMS, AGAIN, AND
16 THEY CAN HAVE A CONTINUING OBJECTION ON THIS,
17 LADIES AND GENTLEMEN. YOU UNDERSTAND HE IS
18 TESTIFYING FROM HIS EXPERTISE, AND IN GENERAL, FROM
19 HIS IMPRESSION OF THIS PARTICULAR AD.
20 PROCEED.
21 MR. PIUZE: THANKS.
22 Q BY MR. PIUZE: LET ME SPEND A
23 MINUTE ON THAT.
24 I DON'T WANT YOU PUTTING THOUGHTS
25 INTO PHILIP MORRIS'S HEAD OR PUTTING THOUGHTS INTO
26 PHILIP MORRIS'S ADVERTISING AGENCY EXECUTIVES'
27 HEADS, BUT AS THE COURT JUST FINISHED SAYING, I
28 WANT YOU TO DISCUSS THIS FROM YOUR PERSPECTIVE OF
2555
1 WHAT, WHAT YOU KNOW ABOUT ADVERTISING GENERALLY,
2 WHAT YOU THINK, GENERALLY, ADS ARE MEANT TO BE
3 PORTRAYING. OKAY?
4 A. OKAY.
5 Q. OKAY. AND THAT LITTLE SPEECH OF
6 MINE, THAT HOLDS TRUE FOR ALL OF THE ONES THAT I AM
7 GOING TO SHOW YOU.
8 A. FAIR ENOUGH.
9 Q. THANK YOU.
10 ANYWAY, PUTTING RICHARD BOEKEN,
11 INDIVIDUALLY, ASIDE, AND LET'S DO THAT FOR A
12 SECOND, FOR YOUNG MEN, FOR KIDS, 11-YEAR-OLD BOYS
13 IN AMERICA, BACK AROUND 1955, THIS IS A TOUGH GUY,
14 TO BE LIKE; IS THAT RIGHT OR NOT RIGHT?
15 A. YES. IT'S SOMEBODY THAT IS
16 HANDSOME. HE IS COMPETENT. AND SOMEBODY YOUNG
17 WOULD WANT TO ASPIRE TO BE LIKE HIM WHEN THEY GROW
18 UP. AND THERE IS NOTHING A YOUNG PERSON WANTS TO
19 DO MORE THAN TO GROW UP AND BE AN ADULT.
20 Q. WHY DO YOU SAY THAT?
21 A. WHEN YOU ARE 13, YOU WANT TO BE 15.
22 WHEN YOU ARE 15, YOU WANT TO BE 17. WHEN YOU ARE
23 17, YOU WANTED TO BE 19. IT CHANGES EVENTUALLY.

24 Q. WHEN YOU ARE MY AGE, YOU WANT TO BE
25 19.

26 I AM DRAWING YOUR ATTENTION TO THE
27 HAT. DO YOU SEE IT?

28 A. IT'S A SAILOR'S MOTIF OF SOME SORT.
2556

1 AND THAT, AGAIN, CONVEYS -- STARTS TO CONVEY, WHICH
2 WE SEE MORE AND MORE OF LATER, AND THAT IS AN
3 OUTDOORS MAN, CONVEYING AN OPENNESS, A LEVEL OF
4 ENERGY, A LEVEL OF HEALTHINESS, IF YOU WILL.

5 Q. THANKS. OKAY.

6 I AM GOING TO GO TO 8002.38.

7

8 * (EXHIBIT 8002.38, BLOWUP OF
9 MARLBORO AD, MARKED FOR I.D.)

10

11 Q BY MR. PIUZE: GOT IT?

12 A. 1955.

13 Q. IN 1955, DID YOU LIVE IN CANADA?

14 A. YES, I DID.

15 Q. DO YOU KNOW WHAT UNIFORM THAT IS,
16 BY ANY CHANCE?

17 A. THAT'S A MILITARY UNIFORM. I DON'T
18 KNOW WHICH ONE.

19 Q. OKAY. SO I DON'T WANT TO SPEND AS
20 MUCH TIME ON THIS ONE AS THE LAST ONE, BUT I AM
21 SHOWING YOU THIS SAME YEAR. SAME COMMENTS APPLY?

22 A. WELL, CERTAINLY THE MILITARY IS ONE
23 OF THE VERY STRONGEST EXAMPLES OF MASCULINITY AS
24 THOSE THINGS ASSOCIATED WITH THE MILITARY AND
25 THAT'S MEANT TO ASSOCIATE THE CIGARETTE WITH JUST
26 THAT, THE MILITARY.

27 Q. NOW I AM GOING TO SHOW 8002.76.

28 /// /// ///

2557

1 * (EXHIBIT 8002.76, BLOWUP OF
2 MARLBORO AD, MARKED FOR I.D.)

3

4 Q BY MR. PIUZE: THE YEAR, PLEASE.

5 A. 1956.

6 Q. AND YOU ARE LOOKING IN THE UPPER
7 LEFT-HAND CORNER OF THESE FOR THE YEARS?

8 A. RIGHT-HAND CORNER.

9 Q. UPPER RIGHT-HAND CORNER FOR YEARS?

10 A. CORRECT.

11 Q. NOW, THIS PARTICULAR MODEL HERE
12 DOESN'T HAVE A SAILOR CAP ON OR A MILITARY UNIFORM
13 ON; CORRECT?

14 A. THAT IS RIGHT.

15 HE STILL HAS A TATTOO. THAT
16 CARRIED OVER. AND IT'S IMPORTANT, THIS CARRY-OVER
17 ESTABLISHES A KIND OF LOW LEVEL LIMPING OVER TIME,
18 IT'S KIND OF LIKE A BRAND LOGO. THE PILLSBURY
19 DOUGH BOY MIGHT BE ANOTHER EXAMPLE. YOU SEE IT AND
20 ASSOCIATE IT WITH THE BRAND. BUT MORE IMPORTANT
21 ARE THE MORE VISIBLE PARTS TO THIS AND THAT IS THE
22 CAP. HE'S, YOU KNOW, A DASHING FIGURE IN A SENSE.
23 MIGHT BE SOMEBODY THAT HE HOT RODS AROUND IN HIS
24 CONVERTIBLE OR IT VAGUELY KIND OF TASTES OF THE
25 MOVIES, MOVIE FIGURES. AND THESE ARE ALL CERTAINLY
26 MODELS THAT -- OR ASPECTS OF MODELS THAT A YOUNG
27 BOY WOULD WANT TO EMULATE.

28 Q. LET ME JUST DRAW YOUR ATTENTION, IF

2558

1 I COULD, TO THE GUY'S FACIAL EXPRESSION THERE.

2 A. TOUGH.

3 Q. TOUGH?

4 A. JUST TOUGH. YOU KNOW, THERE'S A

5 SKILL IN THE PHOTOGRAPHY OF ADVERTISING. NOTHING

6 IS BY CHANCE IN THE SENSE THAT THESE ARE VERY

7 SKILLED PEOPLE. AND THIS IS NOT SOMEBODY SMILING.

8 IT'S NOT SOMEBODY SOFT. IT'S A TOUGH, DISTANT

9 LOOK. HE'S AN INDIVIDUAL THAT IS MARCHING TO HIS

10 OWN DRUMMER.

11 Q. OKAY, THANK YOU.

12 AND HERE'S 8002.77.

13

14 * (EXHIBIT 8002.77, BLOWUP OF

15 MARLBORO AD, MARKED FOR I.D.)

16

17 THE WITNESS: 1956.

18 Q BY MR. PIUZE: DO YOU SEE THAT

19 ONE?

20 A. YES.

21 DO YOU WANT ME TO COMMENT?

22 Q. I DO.

23 A. THIS IS NOT ERROL FLYNN. IT LOOKS

24 A LOT LIKE HIM. CERTAINLY THE POSE, AGAIN, WITH

25 THE TATTOO, THOSE THICK MASCULINE EYEBROWS. IT'S

26 NOT JUST ANY OLD MODEL. A SCAR, I THINK, ACROSS

27 THE FACE. THIS IS A TOUGH SOPHISTICATE CARNATION,

28 IS THAT IT -- THIS IS A KNOWING TOUGH SOPHISTICATE.

2559

1 Q. NOW, YOU MENTIONED A NAME ERROL

2 FLYNN. NOT ALL OF US IN THIS ROOM KNOW WHO ERROL

3 FLYNN IS OR WAS. SO TELL US, PLEASE.

4 A. HE WAS A HEART-THROB OF THE TIME,

5 IN THE MOVIES. CERTAINLY, IF YOU WANTED TO CATCH

6 THE WOMEN, AS A YOUNG BOY, THAT'S WHO YOU WOULD

7 WANT TO BE.

8 Q. HERE'S 8002.78, THE YEAR ON THIS

9 ONE, PLEASE?

10 A. 1957.

11

12 * (EXHIBIT 8002.78, BLOWUP OF

13 MARLBORO AD, MARKED FOR I.D.)

14

15 Q BY MR. PIUZE: THIS IS THE YEAR

16 THAT RICHARD BOEKEN STARTED SMOKING CIGARETTES FOR

17 REAL. SO TAKE A LOOK AT THAT ONE, PLEASE.

18 I GUESS I SHOULD ASK YOU WHAT'S ON

19 THE BACK OF THIS GUY'S HAND?

20 A. IT'S, AGAIN, FOR A SHORT PERIOD OF

21 TIME, OR I AM NOT SURE A SHORT PERIOD OF TIME, BUT

22 FOR SEVERAL YEARS, IT WAS CLEARLY SOMETHING THAT

23 LINKED THE CAMPAIGN FROM AD TO AD.

24 ANOTHER LINK WAS EACH OF THESE

25 MALES ARE HANDSOME, VIRILE, TOUGH, IN SOME SENSE,

26 ATTENDING TO THEIR OWN BUSINESS. THERE IS NOBODY

27 AROUND TELLING THEM WHAT TO DO EITHER.

28 Q. AND AS OUR SOCIETY HAS ADVANCED

2560

1 HERE, GUYS NOWADAYS ARE SUPPOSED TO BE MORE

2 SENSITIVE. AND I AM NOT TRYING TO BE FUNNY. THEY

3 ARE SUPPOSED TO BE MORE SENSITIVE AND MAYBE MORE

4 "LESS HARD."

5 BACK AT THIS TIME, THAT WAS BEFORE
6 SENSITIVITY TRAINING, WAS THIS, THIS IMAGE, TOUGH,
7 WAS THIS SOMETHING THAT WAS IN TUNE WITH THE TIMES?
8 MR. LEITER: CAN WE HAVE FOUNDATION,
9 PLEASE.

10 THE COURT: HE TESTIFIED THAT HE WAS,
11 REMEMBERS THE ERA.

12 YOU CAN TAKE IT ON CROSS.

13 Q BY MR. PIUZE: HE WANTS ME TO ASK

14 YOU HOW OLD YOU ARE BUT I AM NOT GOING TO DO IT.

15 THE COURT: PROCEED.

16 THE WITNESS: HE'S ENGROSSED AND HIS OWN

17 MAN IS WHAT I WOULD SAY, REGARDLESS OF WHAT THE

18 ACTIVITY IS, ENGROSSED AND IS HIS OWN MAN.

19 MR. PIUZE: HEARSAY 8002.79.

20

21 * (EXHIBIT 8002.79, BLOWUP OF

22 MARLBORO AD, MARKED FOR I.D.)

23

24 THE WITNESS: 1957.

25 Q BY MR. PIUZE: AGAIN?

26 A. THIS CONJURES UP THE OLD DETECTIVE

27 STORIES ON THE T.V. THAT WERE SO POPULAR AT THE

28 TIME. THIS MIGHT BE A TOUGH DETECTIVE OR CERTAINLY

2561

1 MAYBE AN INVESTIGATOR. HE'S A TOUGH GUY.

2 Q. STILL HAVE A TATTOO?

3 A. HE DOES.

4 Q. SO FAR, ALL OF THE PICTURES THAT I

5 HAVE SHOWN YOU IS TOUGH?

6 A. VIRILE.

7 Q. VIRILE?

8 A. HANDSOME.

9 Q. IS THAT A THEME THAT RUNS THROUGH

10 ALL OF THEM?

11 A. YES, AND DOING THEIR OWN THING,

12 MORE OR LESS.

13 THEY ARE NOT SUBJECT TO ANYBODY

14 ELSE TELLING THEM WHAT TO DO.

15 Q. EXCUSE ME FOR 30 SECONDS.

16 HEARSAY 8002.45.

17

18 * (EXHIBIT 8002.45, BLOWUP OF

19 MARLBORO AD, MARKED FOR I.D.)

20

21 Q BY MR. PIUZE: THE YEAR, PLEASE.

22 A. 1957.

23 Q. CAN YOU LOOK AT THAT ONE NOW.

24 CAN'T SEE A TATTOO ON THAT HAND,

25 CAN YOU?

26 A. NO. I SEE SOME FLOWERS.

27 Q. IF THERE'S NOTHING NEW TO SAY ABOUT

28 THIS ONE, THAT IS -- IN OTHER WORDS, IF THIS IS

2562

1 JUST LIKE ALL THE OTHERS AND THERE'S NOTHING NEW TO

2 SAY ABOUT IT, THERE'S NO REASON JUST TO SAY THE

3 SAME THING AGAIN. IF THERE'S SOMETHING

4 DIFFERENT --

5 A. WELL, WHAT I WANTED TO COMMENT ON,

6 AND I THINK WE ARE GETTING A FLAVOR OF THIS BY NOW,

7 IS THIS IS A TEXTBOOK EXAMPLE OF VERY EFFECTIVE

8 ADVERTISING. WHY? BECAUSE YOU GET WHAT IS CALLED

9 VARIATION WITH A CONSISTENT THEME.

10 NOW, A CONSISTENT THEME, AS YOU
11 HAVE SEEN, AS WE HAVE SEEN, IS THE VERY MASCULINE,
12 VERY VIRILE, HANDSOME, VERY INDEPENDENT RUGGED
13 MALE. BUT IF YOU SAW THE SAME ONE OVER AND OVER
14 AND OVER AGAIN, YOU WOULD GET PRETTY TIRED OF IT.
15 IN FACT, WE HAVE STUDIES SHOWING
16 THAT THERE WOULD BE WEAR OUT AND, IN FACT, YOU
17 MIGHT EVEN GET PEOPLE GETTING UPSET WITH THE
18 COMPANY, WHY ARE YOU DISTURBING ME WITH ALL THIS
19 SAME IMAGE, THE EXACT SAME THING. I THINK WE HAVE
20 ALL EXPERIENCED THAT.
21 BUT THERE IS A SENSITIVITY TO THAT
22 ISSUE HERE THAT WE ARE GOING TO CHANGE THE MAN EACH
23 TIME A LITTLE BIT BUT WITH THE SAME POINT TO MAKE,
24 THE SAME SYMBOLS CONJURED UP, THIS IS THE MOST
25 EFFECTIVE KIND OF ADVERTISING.
26 A GREAT DEAL OF CONSISTENCY BUT A
27 VARIATION WITHIN IT.
28 Q. ALL RIGHT. THANK YOU.

2563

1 AND THIS IS 8002.44.

2

3 * (EXHIBIT 8002.44, BLOWUP OF
4 MARLBORO AD, MARKED FOR I.D.)

5

6 Q BY MR. PIUZE: AND I AM GOING TO
7 SAVE MYSELF A TRIP UP THERE. THIS SAYS 1957 ON IT
8 TOO. OKAY?

9 A. YES.

10 Q. ANY FURTHER COMMENT OR DID YOUR
11 LAST COMMENT COVER THIS ONE ALSO?

12 A. HE LOOKS A LITTLE BIT LIKE BOGART.
13 AND CERTAINLY BOGART WAS SOMEBODY A LOT OF MEN
14 WANTED TO EMULATE AND A LOT OF WOMEN CHASED AFTER,
15 OR IN THEIR MINDS CHASED AFTER.

16 Q. EXCUSE ME. AND THIS IS THE LAST
17 ONE IN THIS SERIES. ITS 8002.40, AND I DON'T HAVE
18 A DATE ON THIS ONE HERE.

19 A. WELL --

20

21 * (EXHIBIT 8002.40, BLOWUP OF
22 MARLBORO AD, MARKED FOR I.D.)

23

24 Q BY MR. PIUZE: POINTING OUT TO YOU
25 THAT IT'S A BLACK AND WHITE AD, JUST THE WAY IT IS
26 PUT TOGETHER. DO YOU HAVE AN OPINION IF THIS IS
27 FROM THE SAME GENERAL ERA?

28 A. THE SAME GENERAL ERA, IT LOOKS

2564

1 LIKE. A LITTLE HARD TO SAY. THAT'S CERTAINLY A
2 DIFFERENT TYPE. IT'S HARD TO SAY.

3 Q. I DON'T WANT TO STRETCH YOU OUT.

4 A. IT'S HARD TO SAY.

5 Q. CAN YOU PUT PARAMETERS ON THIS?

6 A. WELL, IT IS BLACK AND WHITE. IT
7 WOULD CERTAINLY BE EARLIER. BECAUSE THERE WAS A
8 GREAT SHIFT IN COLOR BY THE '60'S, SO IT WAS
9 PROBABLY IN THE '50'S. I CAN'T SAY MUCH MORE
10 BEYOND THAT.

11 Q. OKAY.

12 DO YOU SEE THE MESSAGE THERE?

13 A. "NO SALE IF YOU ARE OUT OF STOCK."

14 THIS PROBABLY IS TARGETING

15 RETAILERS AS MUCH AS CONSUMERS. THIS MAY WELL BE
16 PUTTING -- IT COULD BE -- I HAVE SEEN ADS LIKE THIS
17 THAT ARE IN THE TRADE PAPERS. AND THEY ARE REALLY
18 TRYING TO SELL THE MESSAGE TO THE RETAILER THAT IT
19 IS IMPORTANT TO STOCK THIS BRAND, OTHERWISE YOU MAY
20 LOSE, YOU COULD LOSE SOME CUSTOMERS IF YOU DON'T
21 HAVE THIS BRAND. SO IT COULD READILY BE A TRADE
22 PAPER AD.

23 Q. I HAVE THREE MORE BLACK AND WHITE
24 ADS AND THEN I THINK WE ARE DONE WITH BLACK AND
25 WHITE'S.

26 HERE'S 8002.47 AND THIS ONE SAYS

27 '57?

28 A. '57.

2565

1 * (EXHIBIT 8002.47, BLOWUP OF
2 MARLBORO AD, MARKED FOR I.D.)

3

4 Q BY MR. PIUZE: DO YOU SEE THAT

5 ONE?

6 A. YES.

7 THIS IS VERY INTERESTING. THIS

8 MAYBE THE VERY FIRST OF THE MARLBORO MEN. THIS

9 SAYS --

10 Q. HANG ON A SECOND. WEREN'T ALL

11 THOSE MARLBORO MEN THAT WE JUST SAW?

12 A. THOSE WERE SORT OF TOUGH GUYS AND

13 THEY WERE SELLING MARLBOROS. THIS IS MAYBE THE

14 FIRST MARLBORO COWBOY.

15 Q. OKAY.

16 A. AND HE STILL HAS THE TATTOO, SO

17 THERE'S THIS BRIDGE BETWEEN THE, THAT PREVIOUS --

18 THIS IS PART OF THAT CAMPAIGN. AND CERTAINLY A

19 COWBOY. AND IT MAY, AGAIN, BE THE BRIDGE TO THE

20 FUTURE.

21 Q. TAKE A LOOK, IF YOU WOULD, JUST

22 TAKE A LOOK AT THAT TATTOO FOR A SECOND. DO YOU

23 SEE THAT?

24 A. YES.

25 Q. THAT IS AN ANCHOR?

26 A. AN ANCHOR.

27 Q. SO THIS IS A BRIDGE BETWEEN THE

28 SAILOR AND A COWBOY?

2566

1 A. IT IS STRANGE THAT THEY HAVE

2 THAT -- BUT IT IS PROBABLY AN EFFORT TO STILL LINK

3 WITH SOME OF THE ONES THAT WE HAVE JUST SEEN. AND

4 I AM NOT SURE AT THAT TIME, PERHAPS THEY MAY NOT

5 HAVE KNOWN WHERE THEY WERE GOING WITH THIS COWBOY

6 YET. HE WAS, I THINK, JUST ONE OF A BUNCH OF TOUGH

7 VIRILE, HANDSOME MEN.

8 Q. OKAY. NEXT ONE I AM GOING TO SHOW

9 YOU IS FROM 1959, IT SAYS ON IT, 8002.81.

10 DO YOU SEE THAT ONE?

11 A. YES.

12

13 * (EXHIBIT 8002.81, BLOWUP OF
14 MARLBORO AD, MARKED FOR I.D.)

15

16 Q BY MR. PIUZE: SO I DON'T SEE ANY

17 TATTOOS HERE.

18 A. THIS REALLY IS A PRECURSOR OF

19 WHAT'S TO COME. IT'S MARLBORO COUNTRY AND WHERE

20 THE TOUGH COWBOY MAY ROAM. BUT I SEE SOME HORSES.
21 I DON'T KNOW IF I SEE A COWBOY. I DON'T THINK SO.
22 Q. THE GUY IN THE WHITE HAT IS A
23 COWBOY?
24 A. WELL, YOU GOT TO LOOK LONG AND
25 HARD. IT'S VISIBLE BUT NOT VERY VISIBLE. IT'S
26 VERY MUCH A PRECURSOR OF ADS TO COME. IT'S
27 MARLBORO COUNTRY. IT'S OPEN. IT'S CLEAN. IT'S
28 CLEAR. ITS, IN A SENSE, WHOLESOME. OPEN AND
2567
1 WHOLESOME.
2 Q. HERE'S THE LAST OF THE BLACK AND
3 WHITE'S.
4 8002.82.
5
6 * (EXHIBIT 8002.82, BLOWUP OF
7 MARLBORO AD, MARKED FOR I.D.)
8
9 Q. 1961, I SAYS. YOU ARE FAMILIAR
10 WITH THAT AD, AREN'T YOU?
11 A. YES.
12 Q. DO YOU KNOW WHO THOSE PEOPLE ARE?
13 A. I LOOKED AT -- I THINK I RECOGNIZE
14 SOME OF THOSE FOOTBALL PLAYERS. I WAS A GREAT,
15 GREAT NATIONAL FOOTBALL LEAGUE FAN AND I GATHER
16 MR. BOEKEN WAS TOO. HE TALKED ABOUT FOOTBALL, I
17 BELIEVE, AMONG OTHER SPORTS AND HOW HE WAS
18 INFLUENCED BY THE ENDORSEMENT OF FOOTBALL PLAYERS.
19 IT MEANS A LOT IN THE SENSE THAT
20 THESE ARE RUGGED, HEALTHY, TOUGH MEN AND THEY ARE
21 ENDORSING THE CIGARETTE.
22 Q. N.F.L. PLAYERS?
23 A. YES.
24 Q. OKAY. SO LET ME STOP RIGHT HERE,
25 BECAUSE WE HAVE SEEN ENOUGH PICTURES AT LEAST FOR A
26 LITTLE WHILE.
27 NOW, THIS IS AN OPINION QUESTION
28 AND YOU ARE HERE AS AN EXPERT WITNESS. YOU KNOW
2568
1 ABOUT MARKETING AND ADVERTISING. ARE THOSE TOP
2 QUALITY ADS?
3 A. I THINK VERY MUCH SO.
4 Q. ARE THOSE EFFECTIVE ADS?
5 A. VERY EFFECTIVE. ESPECIALLY AS A
6 CAMPAIGN, ALL PUT TOGETHER.
7 Q. DO YOU HAVE AN OPINION AS TO WHO
8 THOSE ADS ARE AIMED AT, PLEASE.
9 A. I THINK THEY ARE AIMED AT YOUNG
10 PEOPLE, IN GENERAL, PROBABLY IN LARGE MEASURE
11 STARTERS. AND STARTERS, GENERALLY SPEAKING, ARE
12 UNDER THE AGE OF 18. 90 PERCENT OF THOSE WHO SMOKE
13 HAVE HAD THEIR FIRST CIGARETTE BEFORE 18. AND BY
14 20, SOMETHING LIKE 80 PERCENT OF SMOKERS ARE
15 SMOKING REGULARLY.
16 SO IT'S A YOUNG PERSON'S THING AND
17 IF YOU ARE GOING TO TARGET PEOPLE, YOU ARE GOING TO
18 TARGET A LOT OF THOSE FOLKS, NOT EXCLUSIVELY.
19 PROBABLY YOUNG ADULTS AS WELL.
20 Q. I DIDN'T HEAR YOU SAY THE OBVIOUS,
21 THAT THE TARGET AUDIENCE WAS MEN.
22 A. YOUNG MALE, YOUNG MALES. AND THEY
23 WOULD GO FROM PROBABLY 10 OR 11 OR 12 ALL THE WAY
24 UP TO 30, 35.

25 Q. WHERE DO YOU GET THE "STARTERS"
26 FROM?
27 A. I BELIEVE THAT'S WHAT IS IN THE, IN
28 SOME OF THE LITERATURE FROM THE COMPANIES
2569
1 THEMSELVES. AND CERTAINLY THE LITERATURE OF
2 RESEARCHERS REFERS TO STARTERS AS THOSE WHO ARE
3 JUST INITIALLY YOUNG SMOKERS.
4 Q. THANKS.
5 LET'S COME BACK TO RICHARD BOEKEN
6 THEN.
7 IN 1954 HERE, HE TESTIFIED THAT HE
8 PICKED UP A BUTT OUT OF AN ASHTRAY AND LIT IT AND
9 THAT WAS HIS FIRST EXPERIENCE SMOKING. AND WHEN HE
10 WAS 13 YEARS OLD, I THINK IT WAS, WHICH WOULD HAVE
11 BEEN HE WAS BORN AUGUST 15, '44, '57, HE STARTED
12 SMOKING REGULARLY. AND I BELIEVE HE DEFINED THAT
13 AS DAILY.
14 SO JUST PLEASE ASSUME THAT. OKAY?
15 A. YES.
16 Q. SO WE HAVE JUST LOOKED AT A BUNCH
17 OF ADVERTISEMENTS FROM 1955, I THINK, PUTTING ASIDE
18 THE FEMALE MODEL ADD, I THINK ALL OF THOSE ADS WERE
19 '55, THROUGH '59, WITH THE EXCEPTION OF THE VERY
20 LAST ONE, THE N.F.L. AD. DO YOU BELIEVE THAT THAT
21 KIND OF ADVERTISING PLAYED A ROLE IN MR. BOEKEN'S
22 SMOKING?
23 A. YES, I DO. YES, I DO.
24 Q. AND I WANT TO POINT OUT TO YOU, AND
25 I WILL USE THE WORD "CHALLENGE," CHALLENGE YOU THAT
26 HE HASN'T SAID A WORD ABOUT SEEING ANY SPECIFIC ADS
27 BACK THEN.
28 A. I WOULD FIND IT AMAZING IF HE COULD
2570
1 REMEMBER. IT'S NOT AS IF HE WAS TAKING A TEST,
2 THAT WASN'T ONE OF HIS TESTS AT SCHOOL. THIS IS
3 VERY MUCH IN THE BACKGROUND AND THEY ARE ALL QUITE
4 SIMILAR IN A SENSE. TO DISTINGUISH ONE FROM THE
5 OTHER YEARS LATER WOULD BE ALMOST IMPOSSIBLE. AND
6 EVEN TO RECALL A CAMPAIGN, KNOW A CAMPAIGN, IT
7 WOULD BE VERY, VERY DIFFICULT FOR AN INDIVIDUAL TO
8 THINK BACK THAT WAY.
9 WHAT WE USUALLY NEED IS SOME
10 PROMPT. IF YOU SEE THAT WHOLE SET, IF YOU SAW THE
11 WHOLE SET, HE MIGHT HAVE SAID, MAYBE --
12 MR. LEITER: OBJECTION, CALLS FOR
13 SPECULATION AS TO WHAT HE MIGHT HAVE SAID.
14 THE COURT: WELL, FAIR ENOUGH. WE ARE
15 SORT OF IN A NARRATIVE HERE.
16 Q BY MR. PIUZE: YES. SO WHY DON'T
17 I CUT YOU OFF RIGHT THERE.
18 AND I WILL ASK A DIFFERENT BETTER
19 AND NARROWER QUESTION.
20 DOES THE FACT -- I AM GOING TO
21 START DIFFERENTLY. WITHDRAW THAT.
22 MR. BOEKEN TESTIFIED AND THE JURY
23 SAW HIM TESTIFY A LOT ABOUT COWBOYS, MARLBORO
24 COWBOYS, MARLBORO COWBOYS, COWBOYS, MARLBORO
25 COUNTRY, OUTSIDE.
26 DOES THE FACT THAT HE DID NOT
27 TESTIFY ABOUT RUGGED, MACHO, TOUGH GUYS FROM 1955,
28 '6, '7, '8, '9, DOESN'T THAT TELL YOU THAT HE NEVER
2571

1 SAW THESE ADS?
2 A. NOT AT ALL. THERE'S A WHOLE BODY
3 OF RESEARCH IN PSYCHOLOGY THAT SHOWS VERY CLEARLY
4 THAT YOU COULD TRAIN SOMEBODY WITH ONE SET OF
5 INFORMATION AND YOU TRAIN THEM SO WELL WITH THE
6 NEXT SET OF INFORMATION THAT THEY FORGET THE FIRST
7 SET.
8 THERE WERE SO MANY MARLBORO MAN
9 COWBOY ADS, MARLBORO COUNTRY ADS, SO VERY MANY OVER
10 THE DECADES OF HIS SMOKING AND HIS LIFE THAT EVEN
11 IF HE HAD HEARD THE FIRST SET PERFECTLY, THE OTHERS
12 WOULD SO HAVE REPLACED THOSE IN HIS MIND THAT THERE
13 WOULD BE NO WAY THAT YOU COULD EXPECT HIM TO
14 REMEMBER THEM.
15 AND HE NEVER STUDIED FOR IT AS A
16 TEST. IT'S VERY MUCH IN THE BACKGROUND, KIND OF
17 ENVIRONMENTAL. AND I WOULDN'T BE -- I WOULD BE
18 SURPRISED IF HE DID REMEMBER THEM.
19 Q. AND SO LEAVING -- I AM ABOUT TO
20 WALK AWAY FROM THOSE NOW FOREVER, ME AND YOU AND
21 THOSE FOREVER, HE TESTIFIED THAT HIS, THIS ISN'T A
22 QUOTE, GROUP OR FRIENDS OR CIRCLE OR THE PEOPLE HE
23 HUNG WITH, MARLBORO WAS THEIR CULTURAL CHOICE BACK
24 THEN. JUST ASSUME THAT THAT'S TRUE AND IT IS NOT
25 MEANT TO BE AN EXACT QUOTE.
26 GIVEN THOSE ADS THAT I JUST SHOWED
27 YOU AND THE JURY, IS THAT SURPRISING AT ALL, THAT
28 IT WAS HIS CULTURE'S CHOICE?

2572

1 A. NOT AT ALL.
2 I THINK THAT WHAT HAPPENS IS, EACH
3 OF HIS COHORTS, EACH OF HIS PEERS ARE EXPOSED TO
4 THE SAME MESSAGES. THEY ARE LIKELY INFLUENCED IN
5 THE VERY SAME WAY.
6 THEY -- YOU HAVE TO REMEMBER NOW
7 WHO WE ARE TALKING ABOUT. WE ARE TALKING ABOUT,
8 HOW OLD WAS HE, 10, 11, 12, 13, 14, THESE ARE --
9 RECALL BACK TO WHEN YOU WERE THAT AGE. THESE ARE
10 VERY, IN A SENSE, FRAGILE PEOPLE FEELING THEIR WAY
11 THROUGH WHO AM I, WHAT IS MY SELF CONCEPT, HOW DO
12 OTHERS SEE ME.
13 AT THAT AGE, YOU LITERALLY, AND
14 THERE'S A GOOD DEAL OF THE LITERATURE IN CHILD
15 DEVELOPMENT THAT SUGGESTS YOU FEEL, THOSE 12- AND
16 14-YEAR-OLDS FEEL LIKE THEY ARE ON A STAGE WITH
17 EVERYONE LOOKING AT THEM ALL THE TIME. IT IS
18 REMARKABLE HOW MUCH THAT'S THE CASE.
19 ANY SMALL THING IS MAGNIFIED. THEY
20 ARE UNSURE OF THEMSELVES, JUST DEVELOPING THEIR
21 SELF CONCEPT.
22 THEY ARE LOOKING FOR, IN A SENSE,
23 SYMBOLS, PROPS, TO HELP THEM CONVEY A SENSE OF
24 SELF. WHO AM I, HOW CAN I TELL OTHER PEOPLE THAT I
25 AM REALLY MORE SECURE.
26 WELL, THEY LOOK AROUND AND GUESS
27 WHAT, THEY ALL FIND THE COMMON ELEMENT OUT THERE.
28 THERE'S THIS CIGARETTE THAT IS SEEN TO BE SMOKED BY

2573

1 ALL THESE PEOPLE THAT SEEM SO SELF-CONFIDENT AND
2 VIRILE AND HANDSOME. JUST WHAT I WOULD LOVE TO BE
3 AS I AM SOME FRAGILE, VULNERABLE 13- AND
4 14-YEAR-OLD.
5 WELL, IF I HANG ONTO THAT, MAYBE I

6 WILL SEEM JUST A LITTLE MORE, ACT LESS FRAGILE AND
7 VULNERABLE.
8 THEY ALL COME TO THE, ROUGHLY, SAME
9 CONCLUSION. THAT ADVERTISING IS WORKING CORRECTLY.
10 AND WHAT HAPPENS IN THAT PEER
11 SETTING IS THERE'S A MUTUAL SELF-SUPPORT.
12 THE CIGARETTE BECOMES ALMOST A
13 BADGE. IT'S ALMOST LIKE A MAGNET. YOU KNOW,
14 THERE'S MISCONCEPTION --
15 MR. LEITER: OBJECT TO THE NARRATIVE.
16 THE COURT: ANOTHER QUESTION, PLEASE.
17 Q BY MR. PIUZE: HERE'S ANOTHER
18 QUESTION.
19 HERE'S 8002.83.
20
21 * (EXHIBIT 8002.83, BLOWUP OF
22 MARLBORO AD, MARKED FOR I.D.)
23
24 Q BY MR. PIUZE: I AM GOING TO SHOW
25 YOU THE NEXT TWO SO I DON'T HAVE TO WALK UP TWO
26 MORE TIMES.
27 A. 1957.
28 Q. AND 8002.84.
2574
1 * (EXHIBIT 8002.84, BLOWUP OF
2 MARLBORO AD, MARKED FOR I.D.)
3
4 THE WITNESS: 1960.
5 MR. PIUZE: THANKS.
6 Q BY MR. PIUZE: HERE'S THE FIRST
7 ONE FROM 1950.
8 HE'S GOT THE TATTOO AGAIN TO LINK
9 HIM UP?
10 MR. LEITER: OKAY, THERE'S NO QUESTION.
11 Q BY MR. PIUZE: I WAS JUST LOOKING
12 AT IT FOR A SECOND. I WILL ASK YOU A QUESTION.
13 SEE THE WHISTLE?
14 A. YES, I DO, HANGING AROUND HIS NECK.
15 Q. DO YOU SEE THE TATTOO?
16 A. YES, I DO.
17 Q. CAN YOU SEE WHETHER THAT ONE IS
18 ALSO AN ANCHOR AGAIN?
19 A. IT IS AN ANCHOR.
20 Q. AND AS FAR AS WORDS THAT HAVE BEEN
21 SPOKEN BEFORE, TOUGH, MASCULINE, DON'T MESS WITH ME
22 KIND OF GUY, THAT'S THE GUY?
23 A. THIS IS ONE OF THE BEST EXAMPLES.
24 HE'S PRETTY SERIOUS AND SQUARE-JAWED. MAYBE THE
25 WHISTLE MEANS ATHLETIC, SOME SORT OF, OR MAYBE SOME
26 COMMANDER OR SOMETHING, BROAD -- BROAD SHOULDERS,
27 SQUARE JAW. BROAD SHOULDERS.
28 Q. OKAY. SO THAT'S '57, RIGHT?
2575
1 A. YES.
2 Q. HERE'S 8002.84. YOU HAVE ALREADY
3 SAID IT'S 1960. LET'S TAKE A LOOK AT THIS FOR A
4 SECOND.
5 NOW, I DON'T SEE ANY TATTOO AND HE
6 DOESN'T LOOK AS MENACING AS THE LAST ONE, DOES HE?
7 A. NO. IT SEEMS THEY ARE TRYING TO
8 LIGHTEN UP A LITTLE IN THIS IMAGE.
9 STILL PRETTY HANDSOME, MAYBE
10 DEBONAIR, RELAXING. CERTAINLY, I'D LIKE TO BE IN

11 THAT POSITION. CERTAINLY SOMEBODY TO BE EMULATED
12 IN TERMS OF HIS HANDSOMNESS AND SORT OF BON VIVANT
13 SITUATION.
14 Q. BON VIVANT, HUH?
15 A. YES.
16 Q. WHAT IF I USED THE WORD
17 SOPHISTICATED?
18 A. SOPHISTICATED, YES.
19 Q. IS THAT A MORE SOPHISTICATED IMAGE
20 THAN WE HAVE BEEN SEEING?
21 A. CERTAINLY AS MUCH. IT SHEDS A
22 LITTLE OF THE TOUGHNESS BUT MAINTAINS THE
23 SOPHISTICATION AND MAYBE A LITTLE MORE SO, AS MUCH.
24 Q. WHEN DID THE COWBOY TAKE OVER,
25 DO YOU KNOW?
26 A. EARLY '60'S. I BELIEVE IT WAS
27 AROUND '63.
28 Q. IS THE COWBOY -- SEE, I AM ASKING
2576
1 YOU THIS AS AN EXPERT. WE ALL LIVE IN THE WORLD
2 HERE. IS THE COWBOY STILL AROUND HERE?
3 A. THE COWBOY IS VERY MUCH ALIVE AND
4 WELL, AT LEAST IN THE ADVERTISEMENTS.
5 Q. HAS THE COWBOY SPREAD BEYOND OUR
6 BORDERS?
7 A. AS I HAVE INDICATED, THE COWBOY IS,
8 I THINK, NEXT TO COCA-COLA, MARLBORO IS -- I DON'T
9 THINK, I KNOW -- NEXT TO COCA-COLA, MARLBORO IS THE
10 NEXT BEST RECOGNIZED BRAND IN THE WHOLE WORLD.
11 THERE'S A STUDY IN BEIJING, CHINA
12 THAT THE VAST PROPORTION OF YOUNG CHILDREN, WHEN
13 SHOWN THE RED AND WHITE MARLBORO CHEVRON, THE
14 SYMBOL ON THE PACKAGE, JUST THAT, WITH THE WHOLE
15 FIVE OR SIX DIFFERENT PRODUCTS, ONE OF WHICH IS
16 CIGARETTES, SOMETHING LIKE 80 PERCENT OF THE KIDS
17 WILL BE ABLE TO LINK UP, NO NAME, JUST THE RED AND
18 WHITE SYMBOL, WITH THE PRODUCT, CIGARETTES.
19 AND WHEN THEY SPELL OUT THE WORD
20 "MARLBORO" IN CHINESE, SO IT SOUNDS VAGUELY LIKE
21 MARLBORO, AND THEY SAY, WHAT IS THAT, SOMETHING
22 LIKE OVER 90 PERCENT SAY, IT'S A CIGARETTE. THEY
23 KNOW IT. IN BEIJING -- THEY KNOW IT IN THAILAND.
24 I HAVE SPENT A LOT OF TIME IN VARIOUS SOUTH ASIAN
25 COUNTRIES.
26 MR. LEITER: OBJECT TO THE NARRATIVE.
27 THE COURT: SUSTAINED.
28 Q BY MR. PIUZE: SO I WAS GOING TO
2577
1 SORT OF GLOBE HOP A LITTLE BIT, BUT I AM NOT GOING
2 TO. IS THE COWBOY A WORLD-RECOGNIZED FIGURE NOW?
3 A. YES.
4 MR. LEITER: OBJECTION, RELEVANCE.
5 THE COURT: OVERRULED.
6 ANSWER?
7 THE WITNESS: YES.
8 Q BY MR. PIUZE: AND CAN YOU GIVE US
9 AN OPINION, IF YOU CAN, I DON'T WANT YOU TO GUESS,
10 SO DON'T GUESS IF YOU DON'T KNOW. BUT HOW LONG HAS
11 THE COWBOY BEEN A WORLD-RECOGNIZED FIGURE?
12 A. I DON'T KNOW HOW FAR BACK IT GOES.
13 I JUST KNOW THAT FROM WHEN I STARTED LOOKING AT IT,
14 THREE AND FOUR YEARS AGO, IT WAS A DOMINANT
15 CAMPAIGN IN MANY COUNTRIES.

16 Q. THANK YOU.
17 YOUR HONOR, WITH SOMETHING LIKE TWO
18 MINUTES LEFT TO GO, THIS IS A GOOD TRANSITION
19 POINT.
20 THE COURT: THANK YOU, GOOD COUNSEL.
21 LADIES AND GENTLEMEN, WE WILL SEE
22 YOU AT 8:45 TOMORROW MORNING. DON'T DISCUSS THE
23 CASE WITH ANYONE.
24
25 (AT THIS TIME, THE PROCEEDINGS
26 IN THE ABOVE-ENTITLED MATTER
27 WERE CONTINUED TO TUESDAY, APRIL
28 17, 2001 AT 9:00 A.M.)